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PUBLIC ACCOUNTABILITY AND WORKS COMMITTEE

NSW Government's use and management of consulting services



Report 3

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Public Accountability and Works Committee

NSW Government's use and management of consulting services

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NSW Government's use and management of consulting services

"May 2024"

Chair: Ms Abigail Boyd MLC



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Terms of reference

1. That the Public Accountability and Works Committee inquire into and report on the use and management of consulting firms by NSW Government agencies, including:
 - (a) the setting and enforcement of procurement policies,
 - (b) the transparency of work undertaken by consultants, and the accountability of consultants for this work,
 - (c) the adequacy of agency classification, reporting on and disclosure requirements for the use of consultants,
 - (d) whether consultants are being used strategically and in a way that delivers value for money,
 - (e) the management of and measures to prevent conflicts of interest, breaches of contract or any other unethical behaviour,
 - (f) the impact on the capacity and future development of the NSW public service as a result of the increasing reliance on the use of consultants,
 - (g) integrity and transparency obligations of NSW Government agencies in relation to their use of consultants,
 - (h) the use of 'consultant shopping' and the poor public policy outcomes that have arisen from such practices,
 - (i) enforcement actions that have been taken previously, and the adequacy of existing legislation to support integrity agencies to investigate and enforce penalties,
 - (j) the process and timing for releasing reports unfavourable to government policy priorities and initiatives, and
 - (k) any other related matter.
2. That the Committee report by 31 May 2024.

The terms of reference for the inquiry were self-referred by the committee on 31 May 2023.¹

¹ *Minutes*, NSW Legislative Council, 31 May 2023, pp 157-158.

Committee details

Committee members

Ms Abigail Boyd MLC	The Greens	<i>Chair</i>
Hon Scott Farlow MLC	Liberal Party	<i>Deputy Chair</i>
Hon Mark Buttigieg MLC	Australian Labor Party	
Hon Dr Sarah Kaine MLC	Australian Labor Party	
Hon Mark Latham MLC	Independent	
Hon Peter Primrose MLC	Australian Labor Party	
Hon Bronnie Taylor MLC	The Nationals	

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Chair's foreword

This inquiry came about as a direct response to the Auditor-General's 2023 report entitled NSW Government agencies' use of consultants. The Auditor-General found that, although NSW Government agencies had disclosed \$1 billion in consultant engagements over the preceding 5 years, these agencies had not been procuring and managing consultants effectively, lacked a strategic approach to when and how consultants are used and failed to evaluate or assess consultant engagements for quality. Further, the report found that these engagements are increasingly concentrated among the big four consultancy firms, producing strategic risks. The Auditor-General's report, and our subsequent inquiry, coincided with national attention over the degradation of trustworthiness of these massive consultancy firms in the wake of the PwC tax leak scandal.

This report focuses on the NSW Government's interactions with consultancy firms and, while specific in its examples, the themes addressed and our findings and recommendations can be seen as representative of the issues that are plaguing governments across Australia, and indeed internationally.

Our first hurdle to overcome was a definitional one, wherein what was deemed consultancy work for government accounting purposes seems to be at odds with the common-sense public understanding of the term. In fact, this oftentimes arbitrary delineation between consultancy and contractor work in many ways perfectly distils the core of the issue I believe this report seeks to confront. When is a consultant not a consultant? When they have so successfully embedded themselves within our government agencies that they are no longer considered to be consulting, but rather have been contracted to provide core government functions. The creeping privatisation of core government functions is a serious concern both for the efficient use of public money and for the integrity and capability of government decision-making.

The fundamental tension at the heart of this inquiry, and that characterises the Icarian fall from grace of the major consulting firms, is this insidious and creeping expansion of consulting firms into the public service. These firms are staffed by savvy business professionals highly motivated to turn a profit and continue to grow their business. They have entire business streams dedicated to pursuing and delivering government contracts. It follows that the growth of these businesses is reliant on the encroachment onto and diminishment of the public sector – stoking a destructive and self-perpetuating downward spiral of a public sector whose knowledge and skills base is whittled away with each contract and an external consultant only too willing to step in to fill the gap.

It is my concern, and that of this committee, that NSW government agencies have demonstrated an undue and excessive reliance on the use of external professional services agencies. In doing so, we have drained our public sector of agency, motivation, and experience, while chaining ourselves to costly private consultants. This creeping influence has resulted in a weakened public sector, and beyond merely reducing our contracting of external consultancies it will take some time to rectify this degradation of public sector capacity. This work must begin now.

Many of the committee's 28 recommendations seek to improve transparency and contract management by NSW government agencies, to ensure the highest stands of accountability for the expenditure of public money. But another key theme emerging from through the course of this inquiry was that of questionable ethical and corporate practices. It is clear to this committee that more needs to be done to prevent unethical behaviour. Public trust is a crucial aspect of work in the public sector.

For example, evidence heard by the committee made it obvious that there is a significant chasm between what the public would consider constitutes a conflict of interest and what these consultancy firms deem to be, or could be perceived to be, a conflict of interest. It is incumbent on procuring agencies to be responsible for setting the terms for what we consider to be a potential conflict of interest. Successive

breaches of public trust on the part of consultancy firms have proven they can no longer be trusted with making those determinations themselves.

There may well be a more appropriate balance that can be struck, where governments can strategically and selectively choose to tap into private sector expertise to support the work of government agencies in certain circumstances. But it is evident through the course of this inquiry that we currently remain a long way from that point.

The committee is grateful to all inquiry participants for their contributions. The information provided and the insights of many enabled this important issue to be examined.

I also thank my fellow committee members for the way in which they have engaged with the issues throughout the inquiry.

Ms Abigail Boyd MLC
Committee Chair

Glossary

Accounting Professional & Ethical Standards Board	APESB
Australian Securities and Investments Commission	ASIC
Certified Practising Accountants Australia	CPA
Chartered Accountants Australia and New Zealand	CA ANZ
Chief Executive Officer	CEO
Independent Commission Against Corruption	ICAC
Institute of Public Accountants	IPA
International Organisation of Standardization	IOS
Multinational Anti-Avoidance Law	MAAL
Performance and Management Services Scheme	P&MS Scheme
Procurement Board Directive	PBD
Tax Practitioners Board	TPB
Transport Asset Holding Entity	TAHE
State Insurance Regulatory Authority	SIRA

Findings

- Finding 1** 41
The inability of the NSW Government to readily disclose the total amount it spends on consultants across agencies is of significant concern from a transparency and accountability perspective.
- Finding 2** 43
Post-engagement reviews by NSW government agencies have to date been rarely undertaken in any meaningful manner.
- Finding 3** 44
The eTender system should be urgently redesigned to ensure timely, accessible and complete records of all government tenders. These records should be available at all times to enable effective public scrutiny.
- Finding 4** 59
In part, the overuse of consultants by departments and agencies is due to a lack of senior managerial oversight in the public sector. In-house managers obviously know their agencies better than anyone else but in pursuing strategic change, restructuring and difficult HR matters they often find it easier to bring in outside consultants to recommend changes that will upset their public sector workers with redundancies, staff reallocations and new resourcing priorities, rather than confront these issues themselves.
- Finding 5** 59
The overuse and reliance on consultants and contractors by the NSW Government has occurred alongside a reduction in public sector skill and capacity. For the government to be effective in reducing its spend on consultants and contractors, it will need to simultaneously work to bolster the public sector.
- Finding 6** 60
The work of Service NSW is a good model for handling consultants through short-term contracts in disciplines where it lacks expertise (such as advanced IT); it promptly replicates this expertise internally (learning from the consultancy service) and then moves on. Service NSW has been an effective model for this approach.
- Finding 7** 77
That NSW government agencies and consulting services have developed a 'tick and forget' culture when it comes to the management of conflicts of interest.
- Finding 8** 95
The current procurement framework relies on NSW government agencies 'marking their own homework', with no enforceable rules for failing to comply with procurement guidelines.
- Finding 9** 96
There are no real consequences for breach of governance rules by either government agencies or consultants. This leads to frequent errors and results in questionable conduct going unchecked. This lack of accountability is likely to contribute to higher expenditure from public resources than necessary, and negatively impact the public's trust in democratic institutions.

Recommendations

- Recommendation 1** **41**
That the NSW Government revise the definitions of a 'consultant' and a 'contractor' to ensure that the amount spent on consultants and contractors is separately disclosed and readily available.
- Recommendation 2** **42**
That the NSW Government prioritise the development of a single, authoritative data source capturing all government spending on consultants, including that of local health districts.
- Recommendation 3** **42**
That the NSW Government ensure:
- any exemptions from the requirement that agencies report on consultant expenditure are removed
 - government agencies previously exempt from disclosure of consultant expenditure be required to disclose its historical expenditure.
- Recommendation 4** **43**
That the NSW Government ensure any consultants or contractors engaged by government departments or agencies are:
- only hired for the shortest possible period to undertake the required work and as a last resort, whereby departments and agencies need to actively demonstrate this 'last resort' necessity
 - not involved in core government work, that is, work for which departments and agencies do not have their own inhouse capacity or immediate way of developing the skills and capacity consultants can bring
 - able to uplift the capability and skills of the public sector
 - clearly identified as consultants or contractors when working within government agencies, including by email systems, business cards, name badges, security passes, and staff directories
 - not involved in the recruitment process for other consultants and contractors.
- Recommendation 5** **43**
That the NSW Government strengthen the requirements for agencies to conduct post-engagement evaluations to ensure that they are viewed as a compulsory component of substantial engagements of consultants. A report on the outcomes of these reviews should be supplied to NSW Procurement.
- Recommendation 6** **44**
That NSW Procurement report to both Houses of the NSW Parliament on an annual basis to provide details of any post-engagement evaluations that found work completed by consultants was not to the appropriate standard.

- Recommendation 7** **44**
 That the NSW Government develop the eTendering system and website into a permanent record of government procurement that includes:
- the disclosure of all government tenders
 - greater detail in the description of contracts
 - specification of the reasons for either limited or no tender
 - specification of the reasons for all contract extensions and amendments.
- Recommendation 8** **44**
 That the NSW Government require all government reports, or other work prepared using consultants, to disclose which consultancies were used, the amount they were paid, and what conflicts of interest were disclosed.
- Recommendation 9** **45**
 That the Legislative Council consider amending the resolution establishing the Public Accountability and Works Committee to require the committee to conduct a review of consulting services, in relation to any work conducted for, or on behalf of, the NSW Government, at least once every Parliamentary term.
- Recommendation 10** **60**
 That the NSW Government prohibit senior public servants from working for relevant private sector clients and consultants or their representative bodies within six months of leaving the public sector.
- Recommendation 11** **60**
 That the NSW Government require NSW Procurement, in consultation with the NSW Public Service Commission, to report annually on the number of contractors, consultants, and other labour hire workers, as compared to the number of public sector employees within each government agency.
- Recommendation 12** **61**
 That the NSW Government ensure contracts with consulting firms, where appropriate, include a requirement that the government department or agency be trained in relevant knowledge, skills or expertise needed to complete the project, as part of the engagement.
- Recommendation 13** **61**
 That the NSW Government conduct a skills audit of the public sector to determine what skills could be shared between government department and agencies.
- Recommendation 14** **61**
 That the NSW Government investigate the feasibility of developing an in-house speciality consulting team, similar to that of the Australian Government.
- Recommendation 15** **61**
 That the NSW Government, as an interim measure prior to the establishing of an in-house speciality consulting team, allocate responsibility to an appropriate department for the preparation of business cases across the public sector.

Recommendation 16 **78**

That the NSW Government:

- specifically embed the conflict of interest provisions of its *Supplier Code of Conduct* into each contract
- ensure that the parties of each engagement are thoroughly informed as to the expectations surrounding the identification and management of conflicts of interest, both potential and perceived,
- ensure the provisions concerning the management of any conflicts of interest are actively enforced.

Recommendation 17 **78**

That the NSW Government:

- have a far more expansive view of what could constitute a potential conflict of interest, with clear guidance on the types of relationships that could constitute a conflict of interest
- require all consultants or contractors to provide a list of potential conflicts of interest arising from any prospective engagement
- determine whether there is a conflict of interest, not leave this to the consultancies themselves to determine
- specify the penalties to apply for breach of any conditions of the engagement, including the possible return of payment received.

Recommendation 18 **79**

That the NSW Procurement Board amend the *Performance and Management Services Scheme* and other procurement policies and frameworks to prohibit consulting services from providing consulting work to government in spheres in which it also:

- acts as an auditor
- has an ongoing client in that area, or
- has worked in the previous 12 months, in any capacity, for a private sector client that could be affected by the results of the work being undertaken for the government.

Recommendation 19 **79**

That the NSW Government ensure the rules governing conflicts of interest closely follow the guidelines provided by the NSW Independent Commission Against Corruption regarding the perception of a conflict of interest, and that consultants who do not present a conflict of interest be preferred.

Recommendation 20 **80**

That the NSW Government ensure current consultants and those with a continuing financial interest in a consulting firm:

- are deemed ineligible for appointment to a public sector board
- can only act as observers or mentors on public sector boards, or as advisors to senior executives within agencies, only with ministerial approval and full disclosure in relevant annual reports.

- Recommendation 21** 96
- That the NSW Government:
- conduct a thorough review of the procurement process and policies as they relate to the engagement of consulting services, especially the mechanisms for monitoring the engagement and enforcing compliance with its requirements for ethical behaviour
 - implement the necessary changes to the procurement process and policies that are identified by the review.
- Recommendation 22** 96
- That the NSW Government:
- establish an enforceable code of conduct tailored to managing consulting engagements
 - publicise those consulting services that sign the code.
- Recommendation 23** 97
- That the NSW Government introduce a greater range of escalating sanctions for consultants who behave unethically.
- Recommendation 24** 97
- That the NSW Government publicly disclose any instance of a material breach by a consultant or consultancy that would undermine the public confidence or integrity in the NSW Procurement Framework, along with a record of any action taken to address the breach.
- Recommendation 25** 97
- That the NSW Government introduce legislation that would empower the Audit Office of New South Wales to closely examine contracts with consultants and contractors, and the quality of work produced as part of their engagement.
- Recommendation 26** 97
- That the Legislative Council amend the resolution establishing the Public Accountability and Works Committee to require the attendance at future hearings of any consultants and consultancies who benefit from the *Professional Standards Act 1994*.
- Recommendation 27** 97
- That the NSW Treasurer advocate to federal counterparts that consulting firms not be excluded from the requirement to company tax.
- Recommendation 28** 98
- That the NSW Government introduce legislation to amend the *Payroll Tax Act 2007* to require large consulting firms to pay payroll tax on partnership earnings.

Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 31 May 2023.

The committee received 28 submissions and one supplementary submission.

The committee held 10 public hearings.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents, correspondence and answers to questions on notice.

Chapter 1 Overview of how the NSW Government engages consulting services

This chapter provides an overview of how the NSW Government engages with consulting services. First, it sets out the definition of a consultant and briefly discusses the consulting services industry in New South Wales. Next, the chapter outlines the procurement framework for consultancy services, including the role of the NSW Procurement Board and NSW Procurement, the *NSW Procurement Policy Framework* and relevant Procurement Board Directions. It then discusses how consultants engage with the procurement framework. The chapter also outlines the role of oversight bodies and external standards and regulation bodies. It concludes with an overview of the Australian Senate inquiry into the management and assurance of integrity by consulting services, including a summary of its two reports on the PwC tax matter.

Definition of a consultant

- 1.1 Between 2017–18 and 2021–22, the annual reports of NSW government agencies disclosed approximately \$1 billion of spending with over 1,000 consulting firms across more than 10,000 engagements.²
- 1.2 The NSW Government defines a consultant as '... a person or organisation engaged to provide recommendations or professional advice to assist decision-making by management'.³ Features that differentiate a consultant from other professional service providers, include:
- the **advisory** nature of the work
 - the output reflects the **independent** view or findings of the consultant
 - the consultant's performance of the work is not, or mostly not, under the client's direct **supervision and direction**
 - the consultancy being the sole or majority element of the contract in terms of relative value or importance.⁴
- 1.3 Expenditure on consultants and the challenges associated with the definition of a 'consultant' are examined in Chapter 2.
- 1.4 Consultants may be engaged for a variety of reasons, including accessing specific knowledge and skills, filling short-term gaps in available resources, and seeking independent advice or assurance.⁵ Consultants can support work in a wide range of specialist areas, such as policy, legal, accounting, information technology, communications and human resources.

² Audit Office of New South Wales, *NSW Government agencies' use of consultants*, March 2023, p 10.

³ NSW Procurement Board, *PBD-2023-05 Engagement of professional services suppliers*, 21 December 2023.

⁴ NSW Procurement Board, *PBD-2023-05*, 21 December 2023 [Emphasis as per original].

⁵ Audit Office of New South Wales, *NSW Government agencies' use of consultants*, March 2023, p 9.

Consulting services industry in New South Wales

- 1.5 The consulting services industry in New South Wales is comprised of a range of suppliers, including:
- the 'Big Four', namely PwC, KPMG, EY and Deloitte
 - other large consulting services, such as Accenture (formerly Arthur Andersen), McKinsey and the Boston Consulting Group and Bain & Company
 - smaller 'boutique' services
 - sole operators.
- 1.6 A concern raised during the inquiry related to the structure of large consultancies. Specifically, that these organisations are designed as partnerships, rather than companies, which hinders transparency requirements.⁶ In part, the structure has stemmed from certain firms having their origins as accounting services providers and later moving into consulting.⁷ These issues are examined in Chapter 5.
- 1.7 In recent times a number of these organisations, particularly the Big Four, have been involved in various controversial incidents. The most prominent of the past year relates to the disclosure of confidential information by PwC and is examined later in this chapter. Other issues have included:
- KPMG providing advice to both Treasury and Transport for NSW regarding the Transport Asset Holding Entity (examined in Chapter 5)
 - a number of employees at large firms, including KPMG and EY, were caught cheating on ethics exam⁸
 - EY has simultaneously provided auditing services to Santos and provided input to the NSW Government's *Statement on the Future of Gas* (examined in Chapter 5)⁹
 - the use of a consultant to develop Fire and Rescue's Plus Plan (examined in Chapter 2)¹⁰
 - a former Deloitte partner acknowledged he removed two Defence-related documents held by the firm when he left¹¹
 - Elizabeth Broderick conducted a review into the culture at EY that found concerns around racism, bullying and sexual harassment¹²

⁶ Submission 5, Professor James Guthrie et al, p 6.

⁷ Submission 27, Australia Institute, p 3.

⁸ Evidence, Emeritus Professor James Guthrie AM, Emeritus Professor, Macquarie University and Fellow Certified Practising Accountant, 28 July 2023, p 3 and p 4. Also, Evidence, Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance, Chartered Accountants Australia and New Zealand, 28 July 2023, p 16.

⁹ Evidence, Mr Rod Campbell, Research Director, Australia Institute, 28 July 2023, p 22.

¹⁰ Submission 11, FBEU, pp 4-5.

¹¹ Edmund Tadros, 'Former Deloitte partner says removed Defence docs were 'drafts'', *Australian Financial Review*, 20 July 2023.

¹² Evidence, Ms Chapman, 28 July 2023, p 19.

- the NSW Planning Department and the Planning Assessment Commission preferred favourable advice from a private consultant over an assessment by NSW Treasury when approving the state-owned Cobbora Coal Project¹³
- a heritage architect alleged that the NSW Government shopped for a different consultant after he recommended heritage listing for the Powerhouse Museum¹⁴
- the NSW Department of Planning and Environment engaged a 'controversial, industry-aligned economist' in the place of their usual consultant to assess the Dendrobium coal mine extension and Narrabri Gas projects (examined in Chapter 4)¹⁵
- PwC failed to disclose its interest in a private education provider while conducting a confidential review into the Commonwealth regulator of private colleges, the Tertiary Education Quality and Standards Agency¹⁶
- KPMG was paid by the aged care safety and quality commission to undertake audits of residential aged care facilities while charging providers for advice on audits and accreditation¹⁷
- the PwC tax scandal also raised conflicts of interest concerns due to the personal relationship between AFP commissioner Reece Kershaw and former NSW police commissioner Mick Fuller, who joined PwC as a partner in March 2022.¹⁸

NSW Government procurement framework for consultancy services

1.8 Consultancy engagements are facilitated through the NSW Government procurement framework that encompasses legislation, as well as policies and frameworks, including:

- the *Public Works and Procurement Act 1912*, *Government Sector Finance Act 2018*, and the *Government Information (Public Access) Act 2009*
- NSW Procurement policies, rules, frameworks and guidelines
- Procurement Board Directions (PBD)
- prequalification schemes, such as the Performance and Management Services Scheme.

1.9 The NSW Government uses a devolved model of governance for procurement, including the use and management of consulting services. This means that ultimately agencies are responsible for ensuring their procurement practices comply with the broad legislative and policy framework.¹⁹ In addition to appointing a Chief Procurement Officer, it is recommended that

¹³ Submission 27, Australia Institute, p 1.

¹⁴ Submission 27, Australia Institute, p 1.

¹⁵ Submission 27, Australia Institute, p 1.

¹⁶ Submission 5, Professor James Guthrie et al, p 4.

¹⁷ Submission 5, Professor James Guthrie et al, p 4.

¹⁸ Submission 5, Professor James Guthrie et al, p 5.

¹⁹ Submission 19, NSW Government, pp 5-6; Evidence, Ms Sonya Campbell, Chair, NSW Procurement Board, and Deputy Secretary, Commercial, NSW Treasury, 8 August 2023, p 16.

agencies frequently test their compliance with mandatory requirements and other PBDs, in order to best operationalise the governance framework within their agency.²⁰

- 1.10** The Audit Office of New South Wales and the Independent Commission Against Corruption (ICAC) have a role in scrutinising the expenditure of government funds. ICAC also has an educative role and supports agencies to manage procurement engagements.²¹
- 1.11** Certain consultants, particularly those who are practicing accountants, are subject to oversight by external standards and regulation bodies, including the Accounting Professional & Ethical Standards Board, Chartered Accountants Australia and New Zealand and Certified Practising Accountants Australia.

NSW Procurement Policy Framework

- 1.12** The *Public Works and Procurement Act 1912* ('the Act') provides the legislative framework for NSW Government procurement across the state. The *NSW Procurement Policy Framework* ('the Framework') sets out the policy and operating structure for public sector procurement, including the use of consultants and is a 'policy' for the purposes of section 176(1)(a) of the Act.
- 1.13** The Framework identifies five procurement objectives to support the delivery of government services:
- value for money
 - fair and open competition
 - easy to do business
 - innovation
 - economic development, social outcomes, and sustainability.²²
- 1.14** The Framework consolidates the policy settings for procurement and provides detailed guidance to NSW government agencies. Agencies must comply with the mandatory parts of the Framework for procurement of any kind including for goods, services or for construction-related purposes.²³
- 1.15** Additionally, the Framework sets out a best practice three-phased approach for procurement by NSW government agencies, known as the 'Plan, Source, Manage' approach.²⁴ The Framework also includes links to relevant policies, regulations, and legislation applicable at each stage of this approach.²⁵

²⁰ Submission 19, NSW Government, p 6.

²¹ Independent Commission Against Corruption NSW, *Obtaining independent advice: dos and don'ts*, December 2021.

²² Submission 19, NSW Government, p 19

²³ NSW Government, *NSW Government Procurement Policy Framework*, March 2024, p 3.

²⁴ NSW Government, *NSW Government Procurement Policy Framework*, March 2024, p 40.

²⁵ Submission 19, NSW Government, p 19.

NSW Procurement Board

- 1.16** The Act establishes the NSW Procurement Board and outlines its objectives and functions. The Procurement Board is responsible for the development and implementation of a government-wide strategic approach to procurement, including:
- overseeing the procurement of goods and services
 - developing and implementing procurement policies and directions in line with the Act
 - monitoring agencies' compliance with procurement directions or policies
 - investigating and handling complaints about the procurement activities of agencies
 - developing procurement and business intelligence systems for use by agencies
 - collecting, analysing and publishing procurement data.²⁶
- 1.17** The Procurement Board is subject to the direction and control of the Minister for Finance. The secretaries or their delegates of the ten portfolio departments are members of the Procurement Board and the Secretary of NSW Treasury is the chairperson. As discussed later in this chapter, the Procurement Board is supported by NSW Procurement.

Procurement Board Directions

- 1.18** The Procurement Board has the statutory power to issue Procurement Board Directions (PBDs).²⁷ PBDs mandate how government agencies procure goods and services and have the standing of law.²⁸ For most of the evidence gathering phase of this inquiry, the key PBDs for consultants were the *Engagement of professional services suppliers* (PBD 2021-03) and the *Conduct of suppliers* (PBD 2017-07). In December 2023 PBD 2021-03 was replaced by *Engagement of professional services suppliers* (PBD 2023-05).

Engagement of professional services suppliers (PBD 2021-03)

- 1.19** PBD 2021-03 provided the definition of a 'consultant' used by NSW Government agencies.²⁹ It also set out requirements for recording consultant expenditure in annual reports and included a Standard Commercial Framework that applied to the whole-of-government Performance and Management Services Scheme (P&MS Scheme), through which government agencies engage professional services firms including consulting services.³⁰ This PBD is now archived.³¹

²⁶ Submission 19, NSW Government, p 18.

²⁷ *Public Works and Procurement Act 1912*, s 175.

²⁸ Submission 19, NSW Government, p 20.

²⁹ Procurement Board, *PBD 2021-03 Engagement of professional services suppliers*, 8 September 2021.

³⁰ Procurement Board, PBD 2021-03, 8 September 2021.

³¹ Procurement Board, PBD 2021-03, 8 September 2021.

Engagement of professional services suppliers (PBD 2023-05)

- 1.20** In December 2023 the Procurement Board issued the PBD 2023-05 to update procurement arrangements and the engagement of professional services, including consultants, that had been set out by PBD 2021-03.
- 1.21** As previously mentioned, PBD 2023-05 defines a consultant and lists features that distinguish this type of service from other contract providers.³² This direction also acknowledges that professional services engagements often involve both 'consultancy' and 'non-consultancy' elements, and that agencies should classify their engagement based on the predominant component by value, or split the engagements into separate contracts in such instances.³³ Additionally, PBD 2023-05 outlines minimum expectations for NSW government agencies when engaging consultants, including:
- the need to use a consultant, rather than other resource types, is defined
 - the engagement is subject to appropriate confidentiality provisions
 - conflicts of interest (potential, perceived or actual) are declared and managed prior to and during the course of the engagement
 - any variations to the engagement contract have a clear and specific justification
 - an assessment of the consultant's work is performed
 - appropriate documentation and record keeping practices.³⁴
- 1.22** PBD 2023-05 requires that all agencies report 'consultant' expenditure in accordance with the Annual Report requirements in the *Government Sector Finance Act 2018*.³⁵ Further to this, NSW Treasury released an annual reporting framework in February 2023 which contains mandatory reporting requirements. The framework mandates that agencies under the *Government Sector Finance Act 2018* provide information on the use of consultants, with detailed information to be provided in relation to consultancy expenditure above \$50,000 and an aggregate of the number and total of consultancy expenditure below \$50,000, with the information reported in the financial reports of the agencies.³⁶
- 1.23** From January 2024, PBD 2023-05 required that all agencies report 'consultant engagement data' to the Procurement Board through the principal department of an affiliated group of agencies. It also recommended that non-consultant professional services engagement data be included in these reports.

³² Procurement Board, *PBD 2023-05 Engagement of professional services suppliers*, 21 December 2023.

³³ Procurement Board, PBD 2023-05, 21 December 2023.

³⁴ Procurement Board, PBD 2023-05, 21 December 2023.

³⁵ Procurement Board, PBD 2023-05, 21 December 2023. Services provided under the NSW Government Legal Services Panel are excluded from the definition of a consultant for annual reporting purposes only.

³⁶ Evidence, Ms Marina van der Walt, Deputy Secretary, Financial Management and Services, NSW Treasury, 8 August 2023, p 22.

Conduct of suppliers (PBD 2017-07)

1.24 PBD 2017-07 sets out that agencies and service providers are expected to conduct their business relationships in accordance with law and accepted standards of behaviour at all times. Agencies must ensure their procurement processes require suppliers to comply with relevant standards of behaviour, and must report findings of dishonest, unfair, unconscionable, corrupt, or illegal conduct to the Procurement Board.³⁷

NSW Procurement

1.25 NSW Procurement sits within the Commercial Group of NSW Treasury and supports the operation of the Procurement Board.³⁸ Its responsibilities are to:

- administer certain government-wide functions of the Procurement Board including advising, establishing, implementing, and managing the Framework, whole-of-government procurement policies, such as the P&MS Scheme, procurement data systems and analytics, governance, 'goods and services' procurement accreditation and other government-wide functions
- support NSW government agencies with strategic advice, assistance and/or concurrence related to the functions above as well as set out in the Framework
- support government-wide procurement initiatives as well as the NSW Treasury (agency) procurement, and the implementation of innovative, outcomes driven approaches to maximise value for money and make it easier to do business with government.³⁹

1.26 As noted above, NSW Procurement plays a role in overseeing and administering the P&MS Scheme by:

- assessing applications to join the scheme
- managing a standard of commercial framework
- collecting data and developing reporting insights
- managing supplier relationships for the largest suppliers
- supporting agencies which engage with prequalified suppliers.⁴⁰

1.27 The P&MS Scheme is outlined in the next section.

1.28 NSW Procurement also oversees the Standard Commercial Framework, which applies to most types of professional services, including consulting. The Standard Commercial Framework sets out the maximum amounts that consultants can charge for services under its terms.⁴¹

³⁷ NSW Government, ProcurePoint, *PBD 2017-07 Conduct by suppliers*, 22 November 2017.

³⁸ Submission 19, NSW Government, p 5.

³⁹ Submission 19, NSW Government, p 5.

⁴⁰ Submission 19, NSW Government, p 12.

⁴¹ Audit Office of New South Wales, *NSW Government agencies' use of consultants*, March 2023, p 4. See also Procurement Board, *PBD 2023-06 Engagement of professional services suppliers through the Performance and Management Services Scheme*, 21 December 2023.

How consultants engage with the NSW procurement framework

1.29 The NSW Government can engage consultants in three ways within the procurement operating framework:

- whole of government pre-qualification schemes
- agency specific schemes
- engagements outside these schemes.⁴²

1.30 The NSW Government manages various whole of government schemes relating to the engagement of consultants; the Performance and Management Services Scheme is the largest and most relevant to the whole of government use of consulting services.⁴³

Performance and Management Services Scheme

1.31 The *Performance and Management Services Scheme* (P&MS Scheme) currently contains a pool of 3,500 diverse suppliers, all of which are prequalified to supply professional services, including consultancy, to the NSW Government.⁴⁴ The P&MS Scheme covers various professional services,⁴⁵ but excludes construction-related consultants, contingent workers, ICT goods and services, and legal services.⁴⁶

1.32 The P&MS Scheme sets out rules and requirements for suppliers participating in the scheme (supply side) and agencies that use the scheme (demand side), including:

- supplier performance
- reporting of poor performance
- confidentiality requirements
- disclosure of information
- legal and policy compliance
- intellectual property
- liability and indemnity
- dispute resolution.⁴⁷

⁴² Submission 19, NSW Government, p 12.

⁴³ Submission 19, NSW Government, p 12.

⁴⁴ NSW Government, 'Performance and Management Services Scheme', <https://info.buy.nsw.gov.au/schemes/performance-and-management-services-scheme>.

⁴⁵ A list of professional services covered by the scheme can be found at NSW Government, 'Performance and Management Services Scheme', <https://www.info.buy.nsw.gov.au/schemes/performance-and-management-services-scheme>.

⁴⁶ NSW Government, 'Performance and Management Services Scheme', <https://www.info.buy.nsw.gov.au/schemes/performance-and-management-services-scheme>.

⁴⁷ Submission 19, NSW Government, p 12.

- 1.33** As previously discussed, NSW Procurement's main responsibility and role is 'supply-side' management, by administering the scheme and supporting agencies which engage with prequalified suppliers.⁴⁸ NSW government agencies are primarily responsible for the 'demand side' of engagements, including:
- determining whether they possess the business need to engage consultants in the first place, as well as ascertaining if the P&MS Scheme is the most appropriate way to do so
 - planning the scope of the engagement, selecting the professional services firm, as well as managing the deliverables
 - monitoring the compliance of each engagement under the scheme.⁴⁹
- 1.34** Suppliers who want to join P&MS Scheme must agree with its rules before submitting their application.⁵⁰ The rules require suppliers to comply with all applicable laws, regulations, privacy principles, Australian and/or ISO⁵¹ Standards and NSW government policies, guidelines and code of conduct.⁵² This includes the *Supplier Code of Conduct* which outlines the ethical standards and behaviours expected for suppliers. Suppliers are also obligated to comply with conflict of interest provisions.⁵³ The identification and management of conflicts of interest that may be present in engagements between NSW government agencies and consulting services is examined in Chapter 4.
- 1.35** The P&MS Scheme provides for possible courses of action, including suspension or removal, should a supplier breach its obligations under the scheme rules.⁵⁴ If there is a performance issue with a supplier, a NSW government agency is expected, in the first instance, to resolve the issue directly with the supplier. The NSW government agency or professional services firm may escalate it to NSW Procurement if unsuccessful. Where performance is deemed unsatisfactory, NSW Procurement manages the supplier performance by applying sanctions, such as temporary suspension from the scheme or revoking a supplier's admission to the P&MS Scheme.⁵⁵ Monitoring and enforcement of the P&MS Scheme is discussed in Chapter 5.

Role of oversight bodies

- 1.36** Various statutory offices and bodies in New South Wales exist to provide further scrutiny of government expenditure. These include the Audit Office of New South Wales and the Independent Commission Against Corruption.

⁴⁸ Submission 19, NSW Government, p 12.

⁴⁹ Submission 19, NSW Government, pp 12-13.

⁵⁰ Submission 19, NSW Government, p 12.

⁵¹ The International Organization for Standardization develops international standards. Its membership consists of the national standards bodies from 171 countries: ISO, 'About ISO', <https://www.iso.org/about-us.html>.

⁵² Submission 19, NSW Government, p 12.

⁵³ Submission 19, NSW Government, p 12.

⁵⁴ Submission 19, NSW Government, p 12.

⁵⁵ Submission 19, NSW Government, p 12.

The Audit Office of New South Wales

- 1.37** The Audit Office of New South Wales (the Audit Office) is a statutory authority established under the *Government Sector Audit Act 1983*. The Audit Office conducts financial, performance, and special audits that are tabled in the NSW Parliament.⁵⁶
- 1.38** In her submission, the Auditor-General identified six of its reports and audits that are relevant to this inquiry.⁵⁷ The report that was discussed most often was *NSW government agencies' use of consultants* (March 2023). This audit assessed the effectiveness of NSW government agencies procuring and managing consultants. It examined the role of the Procurement Board and NSW Procurement in supporting and monitoring agency procurement and management of consultants.⁵⁸
- 1.39** The audit concluded that NSW government agencies do not procure and manage consultants effectively, specific findings included:
- agencies do not use consultants strategically and do not have systems for managing or evaluating consultant performance
 - gaps in record keeping
 - examples of non-compliance with procurement rules
 - there is no single data source that accurately captures spending on consultants
 - the concentrated use of the Big Four consultancy firms increased strategic risks, such as over-reliance on a limited number of providers and the potential to reduce independent advice
 - based on available data, it was highly unlikely that NSW government agencies will achieve the government's 2019 policy commitment to reduce spending on consultants.⁵⁹
- 1.40** The Auditor-General made seven recommendations directed at enhancing the quality and transparency of data on spending on consultants, the monitoring of strategic risks and agency compliance with procurement and recordkeeping rules, and agencies' strategic use of consultants, including evaluation and knowledge retention.⁶⁰
- 1.41** The other relevant reports and audits from the Audit Office were:
- *Design and implementation of the Transport Asset Holding Entity (TAHE)* (January 2023):
 - found that agencies associated with the design and implementation of TAHE were overdependent on consultants and should have utilised the public service to complete tasks that were conducted by external suppliers

⁵⁶ Audit Office of New South Wales, 'About the Audit Office', <https://www.audit.nsw.gov.au/who-we-are/about-the-audit-office>.

⁵⁷ Submission 1, Auditor-General for New South Wales, pp 2-4.

⁵⁸ Submission 1, Auditor-General for New South Wales, p 4.

⁵⁹ Submission 1, Auditor-General for New South Wales, p 4; Audit Office of New South Wales, *NSW government agencies' use of consultants*, March 2023, p 26.

⁶⁰ Audit Office of New South Wales, *NSW government agencies' use of consultants*, March 2023, p 8.

- noted that the estimated final cost of the engagements was \$22.56 million, compared to a total initial estimated cost of \$12.94 million
- noted that across seven years, 20 of a total of 36 consulting engagements were conducted by three consulting firms, including an instance where KPMG was engaged simultaneously by NSW Treasury and Transport for NSW, with any real and perceived conflicts of interest arising being left to the consultants to manage
- raised concerns about the risk that agencies were not receiving value for money or impartial advice, and that consultants' roles were being 'blurred', with the distinction between providing expert independent advice mixing with providing a pre-determined outcome.⁶¹
- *Report on State Finances 2022* (December 2022):
 - recommended that NSW Treasury consider if there is adequate oversight of its use of consultants and assess the risk of overreliance on consultants at the cost of internal capability
 - found that the state reported a decrease in consultancy fees of \$6 million bringing total expenditure to \$180 million in 2022.⁶²
- *Internal Controls and Governance 2022* (December 2022):
 - found that agencies risked over-reliance by using the same consultants
 - discussed issues regarding probity, conflicts of interests, rotations of independent consultants, and additional review of consultant work to address the risk of opinion shopping.⁶³
- *Report on State Finances 2021* (February 2022)
 - found that consultants had been used extensively by agencies regarding TAHE
 - noted that risks of extensive consultant use included agencies 'shopping' for opinions from consultants to ensure advice received matched the outcome sought, and that heavy reliance on consultants led to an inability to challenge their opinions
 - recommended that NSW Treasury determine if there is sufficient oversight of its use of consultants.⁶⁴
- *Procurement and reporting of consultancy services* (September 2018)
 - found that none of the 12 agencies examined fully complied with proscribed PBDs
 - viewed the Procurement Board as ineffective in overseeing procurement and that its guidance was inadequate
 - determined that there was a lack of consistency in how 'consultants' were defined across the sector, and that there was insufficient data to enable effective oversight.⁶⁵

1.42 The Audit Office's TAHE report is discussed in Chapter 2. TAHE is also examined in Chapter 4.

⁶¹ Submission 1, Auditor-General for New South Wales, p 3.

⁶² Submission 1, Auditor-General for New South Wales, p 3.

⁶³ Submission 1, Auditor-General for New South Wales, p 3.

⁶⁴ Submission 1, Auditor-General for New South Wales, p 2.

⁶⁵ Submission 1, Auditor-General for New South Wales, p 2.

Independent Commission Against Corruption

- 1.43** The Independent Commission Against Corruption (ICAC) was established in 1988.⁶⁶ All NSW government agencies (except the NSW Police Force and the NSW Crime Commission) come under the jurisdiction of ICAC. ICAC's jurisdiction also extends to those performing public official functions.⁶⁷
- 1.44** ICAC's principal functions are set out in the *Independent Commission Against Corruption Act 1988* and include to:
- investigate and expose corrupt conduct in the New South Wales public sector
 - actively prevent corruption through advice and assistance
 - educate the New South Wales community and public sector about corruption and its effects.⁶⁸
- 1.45** ICAC has released two key pieces of guidance relevant to consulting and procurement within the New South Wales public sector:
- *Managing Conflicts of Interest in the NSW Public Sector* (2019) - explains how to identify, disclose and manage a conflict of interest and sets out a broad control framework for public sector agencies to consider
 - *Obtaining Independent Advice: Dos and Don'ts* (2021) - provides guidance to public sector agencies on the most effective way to obtain and use independent advice.⁶⁹
- 1.46** Conflicts of interest are examined in Chapter 4.

Role of external standards and regulation bodies

- 1.47** A number of independent bodies regulate the accounting profession and set out mandatory codes of ethics, practices and standards for their members. Members of these bodies must adhere to these professional requirements, based on the Australian Code (APES 10), which follows global best practice as set out in the International Code of Ethics. Whilst the following policies apply to chartered accountant members, it should be noted that consulting services are often provided by non-accountants. These organisations are examined in Chapter 5.

⁶⁶ ICAC, 'About the NSW ICAC – Overview', <https://www.icac.nsw.gov.au/about-the-nsw-icac/overview>.

⁶⁷ ICAC, 'About the NSW ICAC – Overview', <https://www.icac.nsw.gov.au/about-the-nsw-icac/overview>

⁶⁸ ICAC, 'About the NSW ICAC – Overview', <https://www.icac.nsw.gov.au/about-the-nsw-icac/overview>

⁶⁹ Independent Commission Against Corruption NSW, *Managing Conflicts of Interest in the NSW Public Sector*, April 2019, p 4 and Independent Commission Against Corruption NSW, *Obtaining independent advice: dos and don'ts*, December 2021, p 1.

Accounting Professional & Ethical Standards Board

- 1.48** The Accounting Professional & Ethical Standards Board (APESB) is an independent, national body which sets the mandatory code of ethics and professional standards for accounting professionals who are members of Certified Practising Accountants Australia (CPA), Chartered Accountants Australia and New Zealand (CA ANZ) or the Institute of Public Accountants (IPA).⁷⁰
- 1.49** The APESB issues and maintains professional and ethical pronouncements, all of which are applied to the above three major Australian professional accounting bodies. Members of APESB are required to apply all APESB pronouncements to any accounting firms they establish, as well as apply pronouncements to professional services they provide. This includes services provided to the public sector.⁷¹ The APESB is equally funded by CPA Australia, CA ANZ and the IPA.⁷²
- 1.50** The standards outline the fundamental responsibilities of professional accountants when they are performing their role. Each standard contains information on the scope and application of the standard, definitions and the date the standard takes effect. Failure to comply with standards issued by the APESB may lead to disciplinary proceedings being initiated by the professional accounting body to which the member belongs.⁷³
- 1.51** APESB's authority does not include monitoring and enforcement. The three professional accounting bodies and regulatory authorities (i.e. the Australian Securities & Investments Commission and the Australian Tax Office) are responsible for monitoring and enforcing compliance of professional accountants, including conducting disciplinary actions for breaches of APESB standards.⁷⁴
- 1.52** Whilst APESB pronouncements apply to consulting services provided by its members, consulting services are often provided by non-accountants, and other codes of conduct may apply. In the absence of a professional code of conduct for consultants of a specific discipline, there may not be a generally recognised framework to manage a conflict of interest.
- 1.53** APESB issues the Australian Code (APES 110) which is based on the International Code of Ethics, issued by International Ethics Standards Board for Accountants. APES 110 is a key standard and possesses a broad scope to address the diverse range of professional services that accountants can supply. The professional obligations and ethical requirements imposed on members are based on the fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. APES 110 also includes rules and prohibitions regarding conflicts of interest.⁷⁵

⁷⁰ Accounting Professional & Ethical Standards Board, 'About APESB', <https://apesb.org.au/about-apesb/>

⁷¹ Submission 12, Accounting Professional & Ethical Standards Board, p 1.

⁷² Accounting Professional & Ethical Standards Board, 'About APESB', <https://apesb.org.au/about-apesb/>

⁷³ Accounting Professional & Ethical Standards Board, 'FAQs', <https://apesb.org.au/about-apesb/faqs/>

⁷⁴ Submission 12, Accounting Professional & Ethical Standards Board, p 2.

⁷⁵ Accounting Professional & Ethical Standards Board, 'Code of Ethics', <https://apesb.org.au/standards-guidance/apes-110-code-of-ethics/>

Chartered Accountants Australia and New Zealand

- 1.54** CA ANZ is an organisation comprised of qualified chartered accountants, provisional members who are enrolled in CA ANZ's Graduate Diploma of Chartered Accounting, affiliate members who are not chartered accountants but are partners in accounting firms in Australia (consultants), and firms that opt-in to membership.⁷⁶
- 1.55** CA ANZ represents over 136,000 financial professionals, supporting them to build value within businesses, organisations and communities where they work. The organisation protects the reputation of financial professionals by ensuring members comply with a code of ethics, enhanced by a strict disciplinary process.⁷⁷
- 1.56** All CA ANZ members are bound by the same standards of professional conduct and ethics enshrined in APES 110 Code of Ethics (including Independence Standards) issued by the APESB, regardless of profession or discipline.⁷⁸

Certified Practising Accountants Australia

- 1.57** CPA is a professional accounting body and plays a key role in setting professional and ethical standards, providing professional development and education, as well as providing support and resources for all certified practising accountants.
- 1.58** CPA advocates and promotes the accounting profession's standards, ethics and integrity. Members of CPA are held to the standards in APES 110 Code of Ethics for Professional Accountants (including Independence Standards).

Australian Senate inquiry

- 1.59** The Australian Senate's Finance and Public Administration References Committee commenced an inquiry into the management and assurance of integrity by consulting services in March 2023. The terms of reference for the inquiry included:
- how consultants manage conflicts of interest
 - measures to prevent conflicts of interest, breach of contract or any other unethical behaviour by consultants
 - enforcement measures taken in response to integrity breaches
 - how risks to public sector integrity arising from the engagement of consultants are managed

⁷⁶ Submission 13, Chartered Accountants Australia and New Zealand, p 1.

⁷⁷ Submission 13, Chartered Accountants Australia and New Zealand, p 14.

⁷⁸ Submission 13, Chartered Accountants Australia and New Zealand, p 1.

- the transparency of work undertaken by consultants, and the accountability of consultants for this work.⁷⁹

1.60 The committee has held ten hearings and heard from a range of stakeholders, including the Big Four, other consulting services, academics, government departments and public policy think tanks.⁸⁰ The committee has released two reports examined below and is expected to release a final report in late May 2024.

PwC: A calculated breach of trust

1.61 In January 2023, the media reported that PwC, and one of its partners, Mr Peter Collins, had been investigated and sanctioned by the Tax Practitioners Board.⁸¹ Despite having signed multiple confidentiality agreements, from 2013 – 2016 Mr Collins was alleged to have passed on confidential information gained during discussions with Treasury and the Board of Taxation regarding Australia's proposed anti-taxation avoidance laws, including the Multinational Anti-Avoidance Law (MAAL), to PwC partners and others in Australia and overseas.⁸² Mr Collins shared the information to assist existing and potential clients of PwC to evade the anti-avoidance legislation that was to be introduced in 2016—putting at risk \$180 million per year in taxation.⁸³ Additionally, PwC received at least \$2.5 million from assisting clients to sidestep the new laws.⁸⁴

1.62 In part, this led the Australian Senate's Finance and Public Administration References Committee to commence its inquiry.⁸⁵ In June 2023, the committee released *PwC: A calculated breach of trust* due to the 'scale of significance and substantial public interest' of the PwC tax matter.⁸⁶ The report detailed:

- By April 2016, the ATO had become aware that companies were working to avoid the newly introduced MAAL and had contacted the Big 4 in relation to alerts about schemes for tax avoidance towards the end of that year.⁸⁷
- PwC claimed legal professional privilege to conceal its internal documents, including emails that would have revealed the plans that certain PwC partners had for monetising the confidential information that Mr Collins had acquired, from the ATO.⁸⁸

⁷⁹ Finance and Public Administration References Committee, Australian Senate, 'Terms of reference', https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Consultingservices/Terms_of_Reference .

⁸⁰ Finance and Public Administration References Committee, Australian Senate, 'Public Hearings', https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Consultingservices/Public_Hearings .

⁸¹ Finance and Public Administration References Committee, Australian Senate, *PwC: A calculated breach of trust*, June 2023, p 1.

⁸² Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 1.

⁸³ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 1.

⁸⁴ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 2.

⁸⁵ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 2.

⁸⁶ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 1.

⁸⁷ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 3.

⁸⁸ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, pp 3-4.

- The ATO received certain emails indicating that a confidentiality breach may have occurred. In October 2017 the ATO expressed general concerns to Treasury about confidentiality. However, due to secrecy could not share specific information.⁸⁹
- From 2017 – 2019 the ATO received more documents about the potential breach of confidentiality from Mr Collins.⁹⁰
- In 2018 the ATO sought advice for its General Counsel about Mr Collins's actions. Following this advice, the ATO shared certain documents with the Australian Federal Police about the matter. However, after about 12 months it was concluded that there was insufficient evidence to pursue a formal investigation.⁹¹
- In July 2020 the ATO referred Mr Collins to the Tax Practitioners Board (TPB). The TPB commenced its investigation this January 2021. The TPB commenced a separate investigation into PwC in March 2021.⁹²
- The TPB updated its Public Register with its findings and sanctions in relation to Mr Collins and PwC in December 2022 and again in January 2023 to include reasons for its decision.⁹³
- The TPB found that PwC had breached subsection the *Code of Professional Conduct* as it had failed to have in place adequate arrangements to manage conflicts of interest that arose in relation to its activities as a registered tax agent and made a range of recommendations to better manage the governance of the organisation.⁹⁴
- The TPB found Mr Collins had shared confidential information and documentation with other PwC personnel who, in turn, disclosed to clients or potential clients of PwC. Consequently, Mr Collins was found to be in breach of the of the *Code of Professional Conduct* in the *Tax Agent Services Act 2009*. The TPB terminated Mr Collins' registration as a tax agent and prohibited him from applying for registration for a period of two years.⁹⁵

1.63 The PwC tax matter was raised during 2022–23 Supplementary Budget Estimates hearings in February 2023.⁹⁶ The Senate Economics Legislation Committee published answers to questions on notice from the TPD which included 44 pages of heavily redacted PwC emails.⁹⁷ The emails indicated that 'several partners and potentially other employees within PwC were aware of, and involved in, the deliberate misuse of the confidential information to aggressively market PwC to a new client base'.⁹⁸

⁸⁹ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 4.

⁹⁰ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 4.

⁹¹ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 5.

⁹² Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 5.

⁹³ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 5.

⁹⁴ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 5.

⁹⁵ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, pp 6-7.

⁹⁶ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 7.

⁹⁷ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, pp 7-8.

⁹⁸ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 8.

- 1.64** In March 2023, it was revealed that Mr Tom Seymour, then Managing Partner, Tax and Legal, and Chief Executive Officer of PwC Australia, had received emails from Mr Collins regarding the confidential information. Mr Seymour stepped down from his role.⁹⁹
- 1.65** In late May 2023, during the FPA Legislation Committee estimates hearing, Senator Barbara Pocock sought leave to table a list of PwC partners 'involved in the misuse of confidential information'.¹⁰⁰ Ultimately, the committee did not accept this document. However, in answers to written questions to the committee, received in June 2023, PwC provided a full list of 63 individuals who received at least one email regarding MAAL. PwC also provided a redacted version of this document which it requested the committee publish.¹⁰¹ Following advice from the Clerk, the committee did not publish the list of names.¹⁰²
- 1.66** Additionally, in early June 2023, the Australian Financial Review reported the names of at least four former partners on the list who have since left PwC: Messrs Peter Collins, Michael Bersten, Neil Fuller, and Paul McNab.¹⁰³
- 1.67** In May 2023, PwC announced that Dr Ziggy Switkowski AO would conduct a review of its culture. Also in May 2023, Treasury referred the PwC tax matter to the AFP for investigation.¹⁰⁴ In the same month, Ms Kristin Stubbins, then Acting Chief Executive Officer, PwC, published an open letter acknowledging that the organisation had shared confidential tax policy.¹⁰⁵
- 1.68** In June 2023, the committee recommended that:
- PwC cooperate fully and openly with all investigations and inquiries into this matter,
 - PwC promptly publish accurate and detailed information about the involvement of its partners and personnel (including names and positions) in the matters canvassed in its report.¹⁰⁶

PwC: The Cover-up Worsens the Crime

- 1.69** In March 2024, the Senate committee released a follow up report, *PwC: The Cover-up Worsens the Crime*. The report included updates on the timeline of the PwC tax scandal, such as:
- In June 2023, PwC Global wrote to PwC Australia, stating that it was a 'defaulting firm' under the Global regulations, placing PwC Australia under 'supervised remediation', and requiring PwC Australia to appoint Kevin Burrowes as the CEO.¹⁰⁷

⁹⁹ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 8.

¹⁰⁰ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 9.

¹⁰¹ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 12.

¹⁰² Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 17.

¹⁰³ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 12.

¹⁰⁴ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 9.

¹⁰⁵ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 11.

¹⁰⁶ Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, p 19.

¹⁰⁷ Finance and Public Administration References Committee, Australian Senate, *PwC: The Cover-up Worsens the Crime*, March 2024, p 11.

- The release of the names of eight partners that have exited or are in the process of being removed from the partnership.¹⁰⁸
- In September 2023, PwC Australia attempted to provide more detailed information about the tax matter through the release of its *Review of Tax Confidentiality Breaches and Related Questions*.¹⁰⁹
- In October 2023, Mr Kevin Burrowes, CEO, PwC Australia, confirmed that the individuals who were exited from PwC Australia for not upholding their leadership and government responsibilities were Mr Calleja, Mr Gregory, Mr van Dongen, Mr Plummer and Mr Seymour. Mr Burrowes was of the view that the responsibility for the poor culture at PwC rested with the former CEOs.¹¹⁰
- At least six overseas PwC partners should have questioned the origin and potential confidentiality of the information they had received from PwC Australia.¹¹¹
- The TPB has at least nine investigations about these matters underway.¹¹²
- PwC Australia identified numerous occasions between 2015 and 2023 which should have triggered an investigation into the breach of confidential government information.¹¹³
- In August 2023, the Hon Dr Jim Chalmers MP, announced that the government was developing new legislation in response to the tax advisor misconduct brought to light through the PwC scandal.¹¹⁴ On 16 November 2023, the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 (the bill), which included these reforms, was introduced in the House of Representatives. The bill is currently being considered by the Senate Economics Legislation Committee which was due to report by 10 May 2024.¹¹⁵
- In June 2023, it was reported that there were tensions between the ATO and TPB in 2021, which arose when the TPB accessed ATO information as part of its investigation into PwC Australia.¹¹⁶ In February 2024, it was reported that these tensions were more serious than represented to the committee.¹¹⁷
- In September 2023, PwC published Dr Switkowski's review in full and its response to his findings.¹¹⁸ The review presented an 'unflattering assessment of PwC, its practices and processes', and identified seven key shortcomings of the firm:
 - Lack of independence and external 'voices' within the ultimate governing body.

¹⁰⁸ Finance and Public Administration References Committee, *PwC: The Cover-up Worsens the Crime*, p 3.

¹⁰⁹ Finance and Public Administration References Committee, *PwC: The Cover-up Worsens the Crime*, p 4.

¹¹⁰ Finance and Public Administration References Committee, *PwC: The Cover-up Worsens the Crime*, p 7.

¹¹¹ Finance and Public Administration References Committee, *PwC: The Cover-up Worsens the Crime*, pp 8-9.

¹¹² Finance and Public Administration References Committee, *PwC: The Cover-up Worsens the Crime*, p 9.

¹¹³ Finance and Public Administration References Committee, *PwC: The Cover-up Worsens the Crime*, p 13.

¹¹⁴ Finance and Public Administration References Committee, *PwC: The Cover-up Worsens the Crime*, p 18.

¹¹⁵ Finance and Public Administration References Committee, *PwC: The Cover-up Worsens the Crime*, p 19.

¹¹⁶ Finance and Public Administration References Committee, *PwC: The Cover-up Worsens the Crime*, p 19.

¹¹⁷ Finance and Public Administration References Committee, *PwC: The Cover-up Worsens the Crime*, p 20.

¹¹⁸ PwC, *PwC Australia's Commitments to Change: Response to findings of Dr Ziggy Switkowski AO and recent events at PwC Australia*, 2023.

- Excessive power conferred on the CEO.
 - Disproportionate focus on revenue growth and market leadership as the strategic imperatives.
 - Decentralised business model without sufficient visibility of the enterprise view.
 - Complexity and fragmentation contributing to ineffective structures and processes.
 - Unclear responsibilities and accountabilities creating gaps and risks.
 - Overly collegial culture inhibiting constructive challenge.¹¹⁹
- In July 2023, Allegro Funds announced that PwC Australia's Public Sector advisory business would become an independent government-specialist company. Allegro purchased PwC's government advisory business for \$1 and intended to take on approximately 1,750 staff as Scyne Advisory.¹²⁰ Scyne Advisory is discussed in Chapter 5.

¹¹⁹ Finance and Public Administration References Committee, *PwC: The Cover-up Worsens the Crime*, p 24.

¹²⁰ Finance and Public Administration References Committee, *PwC: The Cover-up Worsens the Crime*, p 32.

Chapter 2 Expenditure on consulting services

This chapter provides an overview of spending on consulting services by the NSW Government. It highlights the complexities around the interpretation of a 'consultant' and how this hinders comparison of spending both between agencies and throughout time. The chapter also discusses the lack of a single data source for consultant expenditure. Finally, this chapter considers those circumstances in which spending on consultants may be considered good value for money and outlines the importance of transparency as an accountability measure.

NSW Government spending on consultants

2.1 The annual Total State Sector Accounts is the definitive source of the consolidated consultant expenditure by NSW government agencies, as defined in the annual reporting framework under the *Government Sector Finance Act*.¹²¹ Table 1 sets out the consultancy fees for the general government sector and the total state sector reported in 2021-22 and 2022-23.¹²²

Table 1 Consultancy fees reported in Total State Sector Accounts 2021-22 and 2022-23

	General Government Sector		Total State Sector	
	2022-23	2021-22	2022-23	2021-22
Consultancy Fees	\$m	\$m	\$m	\$m
	130	131	193	180

2.2 As noted in Chapter 1, most NSW government agencies are required to disclose information about consulting engagements in their annual reports. The cost of consultant engagements above \$50,000 must be disclosed by individual project whereas those valued less than \$50,000 may be reported in aggregate form. Additionally, agencies must publicly report all contracts that have a value of \$150,000 or more, including on the NSW Government tender website.¹²³

2.3 In 2023, the Audit Office of New South Wales ('the Audit Office') used NSW government agencies' annual reports to estimate expenditure on consulting services between 2017-18 and 2021-22. According to these calculations, NSW government agencies spent more than \$1 billion on consultants during this period.¹²⁴ The estimates from the Audit Office are depicted in Figure 1.

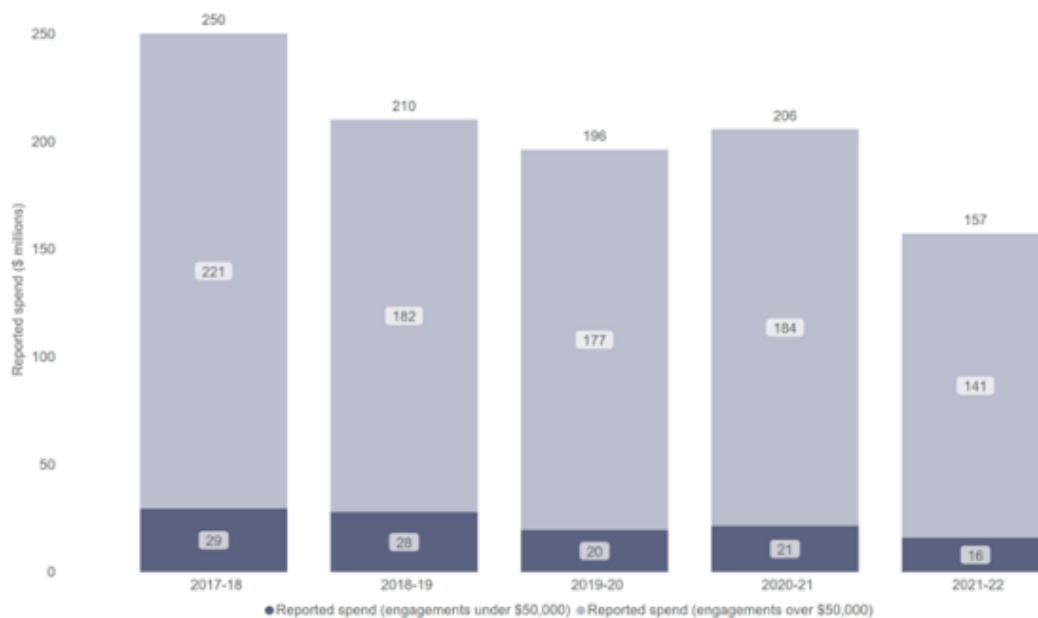
¹²¹ Submission 19, NSW Government, p 14 and 26; *Government Sector Finance Act 2018*, s2.5

¹²² NSW Treasury, *Report on the state finances 2022-23*, p 6-35, <https://www.treasury.nsw.gov.au/sites/default/files/2024-01/20230122-2022-2023-report-on-state-finances-final.pdf>.

¹²³ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 9.

¹²⁴ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 1.

Figure 1 Spending on consultants by NSW government agencies in annual reports, total (recurrent and capital), 2017-18 to 2021-22 (\$ millions)



Note: Consulting services provided through the NSW Government Legal Services Panel are not captured within annual reports, unless the agency has voluntarily disclosed this information. Data from the Department of Education in 2022 is not included, as its annual report is prepared on a calendar year basis and was not available at the time of reporting.

Source: Audit Office data collection from NSW government agencies' annual report disclosures, 2017-18 to 2021-22 (unaudited).

Source: Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 10.

- 2.4** In 2019, the NSW Government committed to reduce consultancy expenses by 20 per cent each year for the four years from 2019-20. However, the Auditor-General for New South Wales advised that '... actual spending on consulting in NSW Treasury's Reports on State Finances 2020-21 and 2021-22 was almost \$100 million higher than the savings targets over the first three years since 2019-20'.¹²⁵
- 2.5** The committee received evidence from Emeritus Professor Bob Walker and Dr Betty Con Walker that government spending on consultants totalled nearly \$2.6 billion between 2010-11 and 2021-22, indicating that this level of spending appears to have been sustained over the last decade.¹²⁶
- 2.6** The Auditor-General also noted a sizable proportion of the expenditure on consulting services was concentrated on a select number of firms. While total spending on consultants was spread across more than 1,000 firms between 2017-18 and 2021-22, more than one-quarter of consultancy expenditure went to the Big Four professional services firms, namely KPMG, EY, PwC and Deloitte.¹²⁷

¹²⁵ Submission 1, Auditor-General for New South Wales, p 4.

¹²⁶ Submission 21, Emeritus Professor Bob Walker and Dr Betty Con Walker, p 14.

¹²⁷ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 6.

2.7 The committee received a great deal of evidence about the amount spent on consulting services by individual departments and agencies.¹²⁸ Table 2 provides some examples of consultant spend that were provided to the committee. The figures are illustrative only and are not intended to be comparable. Some of the spending by agencies refers to multiple years, whereas for others it is in relation to a single year. In the case of NSW Treasury, the expenditure is in reference to a specific project.

Table 2 Examples of consultant expenditure by government departments and agencies provided to the committee

Government department or agency	Consultant expenditure
NSW Health	\$235.3 million on consulting services between 2011 and 2022, as published in the Annual Audited Financial Statements of its annual reports ¹²⁹
Health Infrastructure	\$155 million in 2022-23, including all capital works consultants, but with 'a very minor' advisory consultancy spend ¹³⁰
Local Health Districts	\$125.2 million between 2011 and 2022 ¹³¹
NSW Ambulance	\$24.3 million between 2014 and May 2023 ¹³²
Transport for NSW	\$27.55 million for consultants in 2021-22. ¹³³ This was at the consolidated level and included expenditure within Transport for NSW, Sydney Trains, Sydney Ferries, State Transit Authority and Sydney Metro.
Infrastructure NSW	\$1.567 million on consultants and \$10.2 million on contractors in 2022-23 ¹³⁴

¹²⁸ See, for example, Answers to questions on notice, NSW Health, received 24 June 2023, pp 1 and 3; Evidence, Mr Brian Jackson, Executive Director, Finance and Corporate Services, NSW Ambulance, 30 June 2023, p 11; Answers to questions on notice and supplementary questions, Transport for NSW, received 4 October 2023, p 2; Evidence, Ms Janine Lonergan, Acting Chief Executive, Infrastructure NSW, 5 September 2023, p 21; Answers to questions on notice and supplementary questions, Infrastructure NSW, received 4 October 2023, p 1; Evidence, Mrs Lyndal Punch, Chief Financial Officer and EFM Finance and Business Performance, Transport Asset Holding Entity [TAHE] NSW, 5 September 2023, p 35.

¹²⁹ Answers to questions on notice, NSW Health, 24 June 2023, p 1. However, NSW Health notes that the 2019 figure was overstated by \$9 million.

¹³⁰ Evidence, Ms Rebecca Wark, Chief Executive, Health Infrastructure, 30 June 2023, p 27.

¹³¹ Answers to questions on notice, NSW Health, 24 June 2023, p 3.

¹³² Evidence, Mr Jackson, 30 June 2023, p 11.

¹³³ Answers to questions on notice and supplementary questions, Transport for NSW, received 4 October 2023, p 2.

¹³⁴ Evidence, Ms Lonergan, 5 September 2023, p 21; Answers to questions on notice and supplementary questions, Infrastructure NSW, received 4 October 2023, p 1.

NSW Treasury	PwC was paid \$40.6 million to develop and operate the Prime accounting system. Deloitte received \$8.4 million to provide further advice and assistance on Prime, and KPMG was paid \$184,000. ¹³⁵
Sydney Water	\$2.1 million in 2021-22 ¹³⁶
icare	\$15.7 million in 2022-23 ¹³⁷
SIRA	\$6.3 million in 2021-22 ¹³⁸
Fire and Rescue NSW	\$17.5 million between 2010-11 and 2022-23 ¹³⁹

2.8 Stakeholders noted that consultant expenditure could vary substantially between agencies, and also fluctuate from one year to the next. However, Ms Susan Pearce AM, Secretary, NSW Health, emphasised the importance of considering such spending against the size of the relevant departmental budget, noting that '...the spend on consultants as an overall proportion of the Health spend is tiny. You're talking about less than, in some cases, 0.9 of a per cent of a budget year. Notwithstanding that, there are clear, large dollar amounts attached to those spends and we are cognisant of that.'¹⁴⁰

Difficulties with calculating spend

2.9 Throughout the inquiry, it became clear that there are a number of obstacles hindering the comparison of consultant expenditure from one year to the next, as well as between government agencies. This is due to definitional issues, the lack of a single definitive data source, as well as possible under-reporting of the amount spent and exclusion from annual reporting requirements.

Definitional issues

2.10 The committee received evidence indicating that the distinction between expenditure on consultants as opposed to contractors was sometimes blurred and not always well understood by government agencies. This supported a finding of the Auditor-General's 2018 report, *Procurement and reporting of consultancy services*, which examined the compliance of 12 agencies with procurement and reporting obligations and highlighted that 'it is difficult to quantify total government expenditure on consultants as agencies define 'consultants' differently'.¹⁴¹

2.11 As mentioned in Chapter 1, consultants are considered within the 'Professional Services' category of the *NSW Government Procurement Framework*. For most of the evidence gathering

¹³⁵ Answers to questions on notice, NSW Treasury, received 11 July 2023, p 6.

¹³⁶ Evidence, Ms Denisha Anbu, General Manager, Governance and Assurance, Sydney Water, 6 September 2023, p 38.

¹³⁷ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 16 August 2023, p 22.

¹³⁸ Evidence, Mr Adam Dent, Chief Executive, SIRA, 16 August 2023, p 27.

¹³⁹ Answers to questions on notice, Fire and Rescue NSW, received 7 September 2023, p 1.

¹⁴⁰ Evidence, Ms Susan Pearce AM, Secretary, NSW Health, 16 August 2023, p 9.

¹⁴¹ Submission 1, Auditor-General for New South Wales, p 2.

phase of this inquiry, agencies were reliant on *Procurement Board Direction 2021 – 03 Engagement of professional services suppliers* (PBD 2021-03) which defined a 'consultant' as a person or organisation that is temporarily contracted to provide advisory work to assist decision-making by management.¹⁴² PBD 2021-03 explained that the 'advisory nature of the work' distinguishes consulting services from other contractors. *Engagement of professional services suppliers* (PBD 2023-05) was released in December 2023 and provides further guidance around the definition of a consultant.

- 2.12** For clarity, the NSW Government has described contractors as '... people employed by a contingent labour supplier and hired from that supplier by a NSW Government agency to provide labour or services'. The government added: 'Contingent labour does not refer to consultants or companies engaged under a contract or statement of work to provide services to a client'.¹⁴³
- 2.13** The committee heard that various agencies understood the distinction between a 'consultant' and a 'contractor', and that their policies and guidelines reflected PBD 2021-03.¹⁴⁴ However, it became clear throughout the inquiry that confusion around definitions remained, with NSW government agencies still not consistently reporting consulting expenditure in 2023. The Audit Office noted that these inconsistencies impacted the comparability of annual report data between agencies.¹⁴⁵
- 2.14** For example, when questioned about the variation in the completeness of the records of the contracting spend by local health districts, representatives of NSW Health acknowledged that differences in the interpretation of consultancy, contractors and professional services contributed to discrepancies in its reported numbers.¹⁴⁶
- 2.15** In a similar vein, Infrastructure NSW acknowledged that it had applied the definition of a 'consultant' differently prior to 2022. Ms Janine Lonergan, Acting Chief Executive, Infrastructure NSW, explained to the committee how the disclosure of consultant spend in its annual reports had varied over the years:

Prior to the 2022 financial year we included "professional services"—for example, large infrastructure delivery contracts, engineers, architects and the like—in our consultants disclosures. This was broader than the Procurement Board definition. Since the 2022 financial year, Infrastructure NSW has disclosed its consultancy services in line with the Procurement Board definition. We disclosed consultants engaged specifically to provide advisory work for management, including capitalised consultancy. Our total consultant

¹⁴² Procurement Board, *PBD 2021 – 03 Engagement of professional services suppliers*, 8 September 2021.

¹⁴³ NSW Government, buy NSW, 'Definition of a consultant' <https://www.info.buy.nsw.gov.au/resources/definition-of-a-consultant>

¹⁴⁴ Evidence, Ms Sonya Campbell, Chair, NSW Procurement Board and Deputy Secretary, Commercial, NSW Treasury, 8 August 2023, pp 16-17; Evidence, Mr Paul Plowman, General Manager, Asset Lifecycle, Sydney Water, 6 September 2023, p 38; Evidence, Mr Darren Cleary, Managing Director, Hunter Water, 6 September 2023, pp 50-51.

¹⁴⁵ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, pp 16 and 18.

¹⁴⁶ Evidence, Mr Alfa D'Amato, Deputy Secretary and Chief Financial Officer, NSW Health, 16 August 2023, p 4.

spend for the 2022 financial year was \$2 million. For the 2023 year, our total consultancy spend was \$1.7 million.¹⁴⁷

2.16 Ms Lonergan went on to describe how Infrastructure NSW now distinguishes between a consultant and a contractor:

The way in which we understand the definition of a consultant is that it's somebody providing advice to management to assist with decision-making. It's specialist knowledge not usually held within the organisation. That is as opposed to a contractor that is really doing the doing. It's somebody that is delivering services. It's sometimes referred to as body hire or resourcing support.¹⁴⁸

2.17 The committee was advised that NSW Procurement provides guidance and examples to assist agencies to distinguish between a consultant and a contractor. Nonetheless, Mr Song Hong, Executive Director, NSW Procurement, noted that the Auditor-General would like those guidelines to be enhanced.¹⁴⁹ Further to this, Ms Sonya Campbell, Chair, Procurement Board, and Deputy Secretary, Commercial, NSW Treasury, informed the committee that in May 2023 the Procurement Board had 'endorsed a program of work to address the Auditor-General's recommendations for NSW Procurement and the board, including working with agencies to improve and refine the definition of professional services, consultancy services and non-consultancy services'.¹⁵⁰

Lack of a single data source

2.18 There is no single data source that accurately captures spending on consultants. The committee heard that this makes it difficult to calculate and compare the departmental or agency spend on consultants.¹⁵¹ In its 2023 report the Audit Office noted, despite its 2018 recommendations that NSW Procurement improve the quality of information collected from agencies and suppliers, 'there is still no single data source that accurately captures all spending on consultants'.¹⁵²

2.19 There are currently four sources of data for determining consultant expenditure by the NSW Government:

- Prime – the state's financial consolidation system
- Annual reports – these provide an overview of each agency's activities and financial position
- Spend Cube – provides the invoice data from all the agencies across government
- Business Advisory Services reporting dashboard – data provided by suppliers about engagements across the public sector.

¹⁴⁷ Evidence, Ms Lonergan, 5 September 2023, p 19.

¹⁴⁸ Evidence, Ms Lonergan, 5 September 2023, p 19.

¹⁴⁹ Evidence, Mr Song Hong, Executive Director, NSW Procurement, 15 June 2023, p 38 referencing Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 38.

¹⁵⁰ Evidence, Ms Sonya Campbell, Chair, NSW Procurement Board and Deputy Secretary, Commercial, NSW Treasury, 8 August 2023, p 17.

¹⁵¹ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 18.

¹⁵² Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 3.

2.20 However, the Audit Office has highlighted how none of these sources provide a complete picture of the expenditure on consultants either individually or collectively. For example, the oversight body noted that Prime's account for 'recurrent consulting expenditure does not include expenditure on consulting work that agencies have "capitalised", such as consulting work completed as part of the delivery of an infrastructure project'.¹⁵³ Further, the Business Advisory Services reporting dashboard and Spend Cube datasets cannot be reconciled to spend reported in Prime, nor to that recorded in annual reports.¹⁵⁴

2.21 Nonetheless, NSW Treasury advised that it attempts to provide a comprehensive dataset of all consultant related expenditure by consolidating Prime and Spend Cube.¹⁵⁵ Mr Hong explained the benefits of having multiple sets of data, in contrast to the position of the Auditor-General which preferred a single data source:

They [Prime and Spend Cube] provide us with supplier-fed data about the engagements across the sector. They are the two datasets. My team uses those datasets for triangulation purposes because government is complex. I know the Auditor-General would love one single data source. I think triangulation is a way that you can have a view as to what is going on between the operational data that I oversee versus the financial reporting data that my colleagues in Treasury oversee.¹⁵⁶

2.22 A number of inquiry participants identified potential improvements to the collation of consulting service expenditure data.¹⁵⁷ In its submission, EY argued that 'there exists an opportunity to streamline the collection and reporting of data on the procurement of professional services in NSW'.¹⁵⁸ Further, it was of the view that a 'centralised data collection, alongside consistent reporting codes would both improve the quality of data collected from agencies, and enhance the transparency around the awarding and reporting of contracts in NSW'.¹⁵⁹ EY recommended that a consistent set of codes be developed to identify the type of services provided by consultants and that there be a requirement for these to be used for reporting purposes.¹⁶⁰

2.23 In its 2023 report, *NSW government agencies' use of consultants*, the Audit Office noted that NSW Procurement had committed to building a vendor management system 'to improve data quality and visibility of consultant and professional services spend'.¹⁶¹ However, there is no timeline for the implementation of this system due to re-prioritisation during the COVID-19 pandemic as well as 'challenges with agency coordination'.¹⁶² Mr Hong explained to the committee some of the difficulties around streamlining data:

¹⁵³ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, pp 18-19.

¹⁵⁴ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, pp 18-19.

¹⁵⁵ Answers to questions on notice, NSW Treasury, received 11 July 2023, p 5.

¹⁵⁶ Evidence, Mr Song Hong, 15 June 2023, p 38.

¹⁵⁷ For example, Submission 6, KPMG, p 5.

¹⁵⁸ Submission 8, EY, p 9.

¹⁵⁹ Submission 8, EY, p 9.

¹⁶⁰ Submission 8, EY, p 10.

¹⁶¹ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 21.

¹⁶² Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 21.

We can't go wide and deep because, one, from a bureaucratic perspective that would be too burdensome and, two, you've got to be able to do something with the data. How do you get a wide dataset that is targeted? That is a discussion that we are actively involved in with the Procurement Board to determine what that will look like.¹⁶³

- 2.24** The committee heard that there have been some efforts to streamline data within specific departments. Mr Alfa D'Amato, Deputy Secretary and Chief Financial Officer, Financial Services and Asset Management Division, NSW Health, informed the committee that NSW Health had commenced reform of its procurement framework and governance in 2020. All procurement activity is to be transitioned into a statewide platform so as to 'create a single end-to-end centralised procurement system with a single source of truth for all data'.¹⁶⁴
- 2.25** Further, as noted in Chapter 1, the Procurement Board Direction, *Engagement of professional services suppliers* (PBD 2023-05), which commenced on 21 December 2023, requires all agencies to report consultant engagement data to the Procurement Board from January 2024 onwards.¹⁶⁵

Exclusion of certain agencies from annual reporting requirements

- 2.26** A further complicating factor when trying to compare the consultancy spend by departments and agencies is the issue of under-reporting. In its submission, the Audit Office highlighted that in its 2018 report, eight agencies had under-reported consultant fees in their annual reports.¹⁶⁶ This impacts the broader understanding of consultancy spend as 'agency disclosures in annual reports are the only source of information that specifically identifies both recurrent and capital-related consulting expenditure by NSW government agencies'.¹⁶⁷
- 2.27** A further difficulty when determining the specifics of agency spend on consulting services is the exclusion of some agencies from annual reporting requirements. The potentially far-reaching implications of this became apparent when consultant expenditure by local health districts was considered.
- 2.28** Prior to 1 July 2023, NSW local health districts were not required to produce annual reports, and their consulting expenditure was not included in the annual report for the Ministry of Health.¹⁶⁸ Mr Ian Goodwin, Deputy Auditor-General for New South Wales, Audit Office of New South Wales, explained the issues surrounding the exclusion of local health districts from annual reporting requirements:

So the [NSW government agencies' use of consultants] report calls out that local health districts, which are required to prepare financial statements, are not required, under the current requirements, to prepare an annual report, so they don't disclose what consultancies they have engaged because they don't have the annual report. What they're doing is consistent with the requirements set out by the regulations. They're not

¹⁶³ Evidence, Mr Hong, 15 June 2023, p 38.

¹⁶⁴ Evidence, Mr Alfa D'Amato, Deputy Secretary and Chief Financial Officer, Financial Services and Asset Management Division, NSW Health, 15 June 2023, p 17.

¹⁶⁵ NSW Procurement Board, *PBD 2023-05 Engagement of professional services suppliers*, 21 December 2023.

¹⁶⁶ Submission 1, Auditor-General for New South Wales, p 2.

¹⁶⁷ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 10.

¹⁶⁸ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 2.

captured in the Ministry of Health's annual report. The actual expenditure will be rolled up in the financial reports of the local health districts, which are in the Ministry of Health's financial report. But, in the Ministry of Health's annual report, consistent with the regulations, they only include consultancies that the ministry has engaged. So it's very difficult to know what that gap is, but the report calls out that it's probably, at least, \$170 million just on LHDs.¹⁶⁹

- 2.29** However, the Audit Office noted that, from 1 July 2023, the *Government Sector Finance Legislation (Repeal and Amendment) Act 2018* would amend the *Health Services Act 1997* to specify that annual reporting information for any or all NSW Health entities may be included in the annual reporting information prepared by the Ministry of Health under the *Government Sector Finance Act 2018*.¹⁷⁰ The committee learned that local health districts have been required to provide the details of any engagements above \$30,000 to the chief procurement officer since this date.¹⁷¹

Value for money

- 2.30** Most inquiry participants were of the view that there is a role for consulting services in supporting and supplementing the work of government agencies. However, many were quick to specify the particular circumstances in which consultants could add value, with concern expressed about the default rather than strategic use of consultants.
- 2.31** The Audit Office has previously acknowledged that 'Consultants can provide expert knowledge and an external perspective that can help government agencies achieve better outcomes'.¹⁷² Nonetheless, it warned that relying on consultants in 'core public service work increases risks, including over-reliance on consultants for expertise and reductions in the independence of advice'.¹⁷³ These issues are examined in Chapter 3.
- 2.32** When questioned what 'value for money' means, the Deputy Auditor-General for New South Wales described it as 'an art more than a science' before elaborating on the circumstances that allow it to be measured: 'What we would always be looking for is whether management has actually made an assessment against a value-for-money criteria. Management should establish that criteria and it should be documented.'¹⁷⁴

Appropriate use of consultants

- 2.33** A number of stakeholders highlighted the various ways in which government agencies could benefit from the use of consulting services, particularly when used strategically and to provide specialist knowledge. For example, CEPA, an economic and financial consulting business,

¹⁶⁹ Evidence, Mr Ian Goodwin, Deputy Auditor-General for New South Wales, Audit Office of New South Wales, 15 June 2023, p 4.

¹⁷⁰ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 9.

¹⁷¹ Evidence, Mr Alfa D'Amato, Deputy Secretary and Chief Financial Officer, NSW Health, Procurement Board, 8 August 2023, p 22.

¹⁷² Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 25.

¹⁷³ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 25.

¹⁷⁴ Evidence, Mr Goodwin, 15 June 2023, p 5.

argued that consultants deliver substantial value when they provide services in certain circumstances, such as:

- specific expertise that would be impractical or inefficient for the client to develop or maintain in-house
- additional capacity to help the client deliver an unanticipated or peaky workload
- an independent opinion on the issue at hand.¹⁷⁵

2.34 Similarly, Mr Gary Wilson, Delegate and former Secretary, Australian Paramedics Association (NSW), stated: 'I firmly believe that there is a genuine place for the use of consultants in private and public sector, and where you've got short-term specialised requirements, then consultancy certainly makes a lot of sense.'¹⁷⁶

2.35 Ms Campbell was of the view that 'Although there are opportunities for the public sector to increase its breadth and depth of capabilities, there is also a role for consultancy firms to provide strategic advice to government'.¹⁷⁷ Referring to the COVID-19 pandemic and natural disasters, she concluded, 'There is a balance to be struck between investing in core public sector capabilities versus flexibility to seek specialist advice when required'.¹⁷⁸

2.36 Mr Tobi Wilson, Chief Executive, South Eastern Sydney Local Health District, emphasised that the decision to engage consultants is strategic. He highlighted their utility in situations where there is an absence of the relevant skills internally:

I'm suggesting that we don't enter into this lightly and that we make those decisions with a great focus on what we are actually trying to achieve. The only time we would engage in a consultancy is because we need the expert skills that they potentially could bring because we don't have those skills internally within our organisation or because we are looking for alternative advice that would be able to supplement what we know internally.¹⁷⁹

2.37 Mr Wilson further explained that the public sector is not always able to complete work internally. He outlined some of the obstacles faced by local health districts, including the inability to offer competitive salaries when compared to the private sector:

For the two that I have called out specifically, for the work that we were doing around risk—again, this comes back to what we could realistically expect to be able to employ within a health service, acknowledging the work that we do. We know that risk professionals in a competitive market generally attract salaries that far exceed what we could offer internally, so we use the consultancy to provide a targeted level of support for those people that work in that risk space within our organisation. I don't believe

¹⁷⁵ Submission 14, CEPA, p 2.

¹⁷⁶ Evidence, Mr Wilson, 8 August 2023, p 33.

¹⁷⁷ Evidence, Ms Sonya Campbell, Chair of the NSW Procurement Board and Deputy Secretary, Commercial, NSW Treasury, 8 August 2023, p 17.

¹⁷⁸ Evidence, Ms Sonya Campbell, Chair of the NSW Procurement Board and Deputy Secretary, Commercial, NSW Treasury, 8 August 2023, p 17

¹⁷⁹ Evidence, Mr Tobi Wilson, Chief Executive, South Eastern Sydney Local Health District, 26 June 2023, p 9.

that, in that example, there is an alternative where you could actually employ somebody. We would not be competitive in the marketplace and able to attract people to do that.¹⁸⁰

- 2.38** Mr Wilson went on to provide an example of how the South Eastern Sydney Local Health District had unsuccessfully attempted to employ someone with the relevant skills in virtual health:

Similarly, with the EY piece in the virtual health space we went to market multiple times trying to bring somebody into our organisation and we are just not competitive with what we would pay compared to other organisations. As a result, we need to use other ways of bringing that knowledge into the organisation.¹⁸¹

- 2.39** Discussions around competitive pay are examined in Chapter 3.

- 2.40** The committee heard some positive examples of how consultants were used by smaller agencies. Ms Lonergan explained how Infrastructure NSW employs 144 people, and so uses specialist professional services strategically on an as needs basis.¹⁸² Ms Lonergan noted how the nature of Infrastructure NSW projects lends itself to the efficient and economic use of consultants and contractors:

The timing and scale of the projects delivered is highly variable. This limits opportunities for long-term workforce planning. Each project requires highly specialised, diverse and often scarce professional services. The services are generally required for time-limited, specialised elements of project work. It is neither feasible nor cost effective to recruit required resources into full-time positions in INSW [Infrastructure NSW].¹⁸³

- 2.41** The committee further learned of the various ways in which Infrastructure NSW engages consultants and contractors through various stages of a project.¹⁸⁴ Mr Tom Gellibrand, Head of Projects, Infrastructure NSW, explained how the agency employs a blended model where it sometimes uses government employees, but at other times a contractor or consultant will be necessary:

As far as possible, we'd love to have government employees, but attracting the calibre of employees that you will need sometimes for a project that's between \$500 million and \$1 billion is quite difficult. You need someone with considerable experience. Where they're not available inside the public service or you can't attract them through the normal processes, we need to engage contractors, and we've done that at Infrastructure NSW on a number of occasions.¹⁸⁵

- 2.42** The strategic use of consulting services by another small agency, TCorp, is outlined in the case study below.

¹⁸⁰ Evidence, Mr Wilson, 26 June 2023, p 9.

¹⁸¹ Evidence, Mr Wilson, 26 June 2023, p 9.

¹⁸² Evidence, Ms Lonergan, 5 September 2023, p 19.

¹⁸³ Evidence, Ms Lonergan, 5 September 2023, p 19.

¹⁸⁴ Evidence, Mr Tom Gellibrand, Head of Projects, Infrastructure NSW, 5 September 2023, pp 20-21.

¹⁸⁵ Evidence, Mr Gellibrand, 5 September 2023, p 20.

Case study: The use of consultants by TCorp¹⁸⁶

NSW Treasury Corporation (TCorp) is a state-owned entity that provides financial services exclusively to the NSW Government. TCorp is part of NSW Treasury, but has the same legal capacity, powers and authorities as companies under the *Corporations Act 2001* (Cth).

TCorp does not consider itself to be a major user of consulting services. Before engaging a consultant, TCorp considers whether the proposed work is strategic in nature, outside TCorp's area of technical expertise, or whether an impartial opinion is needed.

A similar approach is adopted in relation to the use of contractors. For example, when implementing the BlackRock Aladdin program, a system licensed to asset owners that assists organisations to understand the risks in their portfolios, a specialist skillset and expertise was required. As no one within TCorp or the NSW Government possessed the skills necessary to implement this program, TCorp identified this as a situation where it was appropriate to engage the services of an external contractor. TCorp believes it is much more cost-effective to have in-house capability, rather than outsourcing to external providers. Indeed, one team within TCorp was previously made up of three to four people and was very reliant on external providers. As TCorp recognises the importance of enhancing internal capability, this team has grown to approximately 20 to 25 people and as a result, TCorp's spend on external entities has decreased considerably.

- 2.43** The committee also received evidence about situations where consultants were used to provide specific expertise that was not available internally. For example, Mr Richard Harding, then Chief Executive Officer and Managing Director, icare, noted that 62 per cent of its consulting expenditure is for specialised actuarial services that help the agency meet best practice regulatory and accounting standards.¹⁸⁷ Mr Harding stated that icare had used consultants in a 'disciplined and deliberate way to access expertise' for a number of other projects.¹⁸⁸ He was of the view that icare's use of consultants represented value for money:

We use them [consultants] specifically with very narrow scope of work to ensure that they do specific pieces. And we focus that in conjunction with, not in replacement of, the management expertise that we have... But what we do is augment that experience, that knowledge and that capability with international benchmarks, with international experience – broader commercial thinking than might be available within the organisation and that sort of specific input. We own the strategy. We develop the strategy and it is our strategy. It is not a consultant strategy.¹⁸⁹

- 2.44** SIRA similarly informed the committee that it uses consultants to provide specialist actuarial analysis to the costing and design of insurance products, as well as the assessment of the performance of those products and indeed our schemes in New South Wales. Mr Adam Dent, then Chief Executive, SIRA, stated: 'SIRA's effective engagement with consultants, in particular

¹⁸⁶ TCorp, 'About TCorp', www.tcorp.nsw.gov.au/about-tcorp/; Evidence, Mr David Deverall, Chief Executive, New South Wales Treasury Corporation, 6 September 2023, pp 27-37. This case study is based on the content of this evidence.

¹⁸⁷ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 16 August 2023, p 14.

¹⁸⁸ Evidence, Mr Harding, 16 August 2023, p 14.

¹⁸⁹ Evidence, Mr Harding, 16 August 2023, p 20.

actuaries, has shown that exceptional value can be delivered for the people of New South Wales'.¹⁹⁰ Nonetheless, Mr Dent also informed the committee that SIRA was building internal capacity to further reduce future expenditure on consulting services.¹⁹¹

- 2.45** A particular issue that emerged throughout the inquiry was the use of consultants by local health districts, including a number of their board members having previously been employed by consulting firms (examined in Chapter 4). When questioned about the benefits consultants bring to health boards, Mr Richard Alcock, Chair, Western Sydney Local Health District Board, explained that they could help balance the skill set of a board:

... the composition of the boards, as set out in the enabling legislation, is really looking for a balance of skills. The balance is made up of those, firstly, who have experience in health administration, finance and business; secondly, clinical governance; thirdly, an association with community; and finally, some involvement with universities or research institutes.¹⁹²

The use of consulting services for work core to the public service

- 2.46** There was discussion during the inquiry about whether consulting services are being used to perform the core work of the public sector. The impact of these types of engagements on the public service are examined in Chapter 3.
- 2.47** The Audit Office identified a number of examples where consultants were engaged to complete work it considered core to the public service, including 'providing advice on whole-of-government accounting policy, and general (non-technical) policy and strategy advice on a major policy issue'.¹⁹³ The Deputy Auditor-General for New South Wales provided further detail about these examples:

We have seen, through the course of our work, particularly with central agencies such as NSW Treasury, which positions itself as a central agency around financial advice to government, the engaging of firms under consultancy where they are preparing meeting agendas, circulating minutes, arranging meetings or doing accounting advice on public sector accounting where you would think that the NSW Treasury would have the expertise and should have the expertise in public sector accounting.¹⁹⁴

- 2.48** Stakeholders also raised the use of consultants to prepare business cases on behalf of agencies, arguing this should be core work of the public sector. For example, the committee heard how NSW Ambulance engaged Deloitte to help write a strategic business case, to present to NSW Treasury, that demonstrated the resourcing requirements of NSW Ambulance if it were to achieve certain response standards.¹⁹⁵

¹⁹⁰ Evidence, Mr Dent, 16 August 2023, p 27.

¹⁹¹ Evidence, Mr Dent, 16 August 2023, p 28.

¹⁹² Evidence, Mr Richard Alcock AO, Chair, Western Sydney Local Health District Board, 26 June 2023, p 17.

¹⁹³ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 6.

¹⁹⁴ Evidence, Mr Goodwin, 15 June 2023, p 3.

¹⁹⁵ Evidence, Dr Dominic Morgan ASM, Chief Executive, NSW Ambulance, 30 June 2023, p 12.

- 2.49** When questioned whether this is the sort of work that consultants should be doing, Ms Ursula Brennan, Public Sector Leader, Partner, Deloitte Australia, explained the reasons for Deloitte having assisted School Infrastructure with the preparation of business cases between 2019 and 2021:

The main reason we were engaged for that was because of the sheer scale to be able to prepare the volume of business cases that were going to be required in that time frame and the capacity available within School Infrastructure to be able to do that and the specific nuances of capability to get those business cases sufficiently robust to be able to demonstrate value for money in the options that were being put up at that scale.¹⁹⁶

- 2.50** Further, Ms Brennan emphasised how Deloitte subsequently supported the transfer of these skills and capability to the Department of Education:

What we actually did, as part of that contract, specifically at the request of School Infrastructure, was to develop, as part of our proposal, a capability and skills uplift program. Through the course of that contract, we wrote more than 84 business cases in conjunction with the department, and that is in a fairly constrained time. What we actually did do in that was develop a whole set of tools, templates and databases around what average costs might be using quantity surveyors et cetera, and used that and built that as a centre of excellence that became embedded into School Infrastructure as their IP.¹⁹⁷

- 2.51** Deloitte noted that the Audit Office had confirmed that its involvement had helped build internal capability within School Infrastructure NSW.¹⁹⁸

- 2.52** At times, the committee heard conflicting opinions as to whether the use of consultants by an agency represented good value. For example, Fire and Rescue NSW were of the view that its use of consultants facilitated the efficient operation of the agency; minimising the spend on administrative staff as opposed to those on the frontline:

Our corporate support and trade staff represent just 7.5 per cent of our overall workforce, and we have been independently benchmarked as one of the leanest and most efficient agencies in terms of the ratio of cost of corporate support to frontline personnel... From time to time consultants are engaged to provide professional advice to inform decision-making and strategic capability decisions. It means we can access professional expertise without permanently increasing our numbers of administrative staff.¹⁹⁹

- 2.53** However, there was debate during the inquiry about use of a consultant to develop Fire and Rescue's *Plus Plan*. The Fire Brigade Employees Union of New South Wales was of the opinion that engaging a consultant, rather than liaising directly with staff, undermined the project:

The overuse of consultants connected to a campaign to rebrand the Fire service, the so-called "Plus Plan" was considered to be the height of that disconnect, with consultants

¹⁹⁶ Evidence, Ms Ursula Brennan, Public Sector Leader, Partner, Deloitte Australia, 16 August 2023, p 41.

¹⁹⁷ Evidence, Ms Brennan, 16 August 2023, p 41.

¹⁹⁸ Answers to questions on notice and supplementary questions, Deloitte Australia, received 13 September 2023, pp 5-6.

¹⁹⁹ Evidence, Mr Jeremy Fewtrell, Acting Commissioner, Fire and Rescue NSW, 9 August 2023, p 2.

accused of having limited understanding of the actual demands of firefighting. There was a strong perception that the core values of the service had shifted from being a service to the community to a business mentality that prioritized spin and optics. For one firefighter that meant "that we are now two separate organisations and the station response structure now basically has to fend for ourselves".²⁰⁰

2.54 Acting Commissioner Jeremy Fewtrell, NSW Fire and Rescue, accepted that it was questionable as to whether the Plus Plan delivered value for money: 'With the benefit of hindsight, there are elements there that I question the value for money of. Some of the outcomes that we got from it and some of the work that we've done – we've been able to drive improvements in our agency.'²⁰¹

2.55 The committee heard that various consulting firms have employed former senior public servants as a way of adding to their breadth of skills and level of expertise. The Australian Paramedics Association (NSW) voiced its concern that, in some cases, this expertise may not be as great as appears. They drew attention to the dynamism of the public sector which may preclude such a consultant from having an in-depth understanding of the current environment:

In terms of the individuals that we've been discussing, such as the frontline management rostering reform, whilst the people that are doing the consulting have a background in ambulance operations... one of the problems that we see is that it's such a dynamic space that you have people who have a background in those fields but have been away from the front lines for significant periods... It's very easy for people to lose touch with what the current realities are.²⁰²

2.56 The lack of appropriate frontline experience could also limit the expertise provided by consulting firms in other ways. In its submission to the committee, the Health Services Union described how PwC had redesigned an information technology system in a local health district that was essential to the care of critically ill patients.²⁰³ However, it argued that the experience of staff was that while some parts worked well, the system was not fit for purpose, with the consultants involved having 'no real understanding of health'.²⁰⁴

2.57 Similarly, Mr Gerard Hayes, NSW/ACT/Qld Secretary, Health Services Union, argued that there should be greater use of internal staff who have a 'great skill set', rather than consultants, to best meet the needs of agencies.²⁰⁵

²⁰⁰ Evidence, Mr Leighton Drury, State Secretary, Fire Brigade Employees' Union of NSW, 9 August 2023, p 23.

²⁰¹ Evidence, Mr Fewtrell, 9 August 2023, p 12.

²⁰² Evidence, Mr Wilson, 8 August 2023, p 36.

²⁰³ Submission 17, Health Services Union, p 4; Answers to questions on notice, Health Services Union, received 17 August 2023, p 1.

²⁰⁴ Evidence, Ms Lauren Hutchins, NSW/ACT/Qld Assistant Secretary, Health Services Union, 9 August 2023, p 20; Submission 17, Health Services Union, p 4.

²⁰⁵ Evidence, Mr Gerard Hayes, NSW/ACT/Qld Secretary, Health Services Union, 9 August 2023, p 19.

The value of post-engagement evaluations

- 2.58** The Performance and Management Services Scheme administered by NSW Procurement requires that post-engagement reviews be completed. As part of the prequalification scheme, agencies must submit post-engagement reports to NSW Procurement for all engagements valued over \$150,000.²⁰⁶ However, the 2023 Auditor-General's report, *NSW government agencies' use of consultants*, found that most agencies do not have systems for managing or evaluating consultant performance.²⁰⁷ The Audit Office was only provided with evidence of post-engagement reviews of work completed for three out of the 82 engagements examined.²⁰⁸
- 2.59** It was suggested during the inquiry that the lack of evaluations may, in part, be related to a loss of capacity within the public service to conduct these reviews. Ms Emma Dawson, Executive Director, Per Capita, observed that 'the loss of capacity and expertise within the public service isn't just about direct work; it's about their ability to manage and oversee the contractors that are coming from the outside'.²⁰⁹
- 2.60** As discussed in Chapter 1, NSW Government procurement uses a devolved model of governance. Consequently, NSW Procurement and the Procurement Board rely on the self-attestations signed by department secretaries and the chief procurement officer to confirm that all requirements, including post-engagement reviews are complete, before considering enforcement action.²¹⁰ Mr Song Hong, Executive Director, NSW Procurement, elucidated that the 'expectation would be that the agencies, one, comply and two, ultimately the agency head is responsible for what happens within that agency. If it requires escalation, it needs to be escalated to NSW Procurement or the NSW Procurement Board'.²¹¹
- 2.61** In June 2023, Ms Campbell noted that the NSW Procurement Board was considering options to improve this system. She later informed the committee that NSW Treasury uses a prompts system to ensure a performance review is undertaken when buyers within NSW Treasury engage consultants.²¹²
- 2.62** NSW Treasury further advised that it would be implementing recommendation five from the Auditor-General's report, *NSW Government agencies' use of consultants*, so that by December 2023 all NSW government agencies would be conducting regular assessments of the quality of work done by consultants.²¹³
- 2.63** Additionally, as noted in Chapter 1, in February 2023 NSW Treasury released an annual reporting framework which contains mandatory reporting requirements. The framework mandates that agencies under the *Government Sector Finance Act 2018* provide information on the

²⁰⁶ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 7.

²⁰⁷ Submission 1, Auditor-General for New South Wales, p 4.

²⁰⁸ Audit Office of New South Wales, *NSW government agencies' use of consultants*, 2 March 2023, p 7.

²⁰⁹ Evidence, Ms Emma Dawson, Executive Director, Per Capita, 28 July 2023, pp 32-33.

²¹⁰ Evidence, Ms Sonya Campbell, Deputy Secretary, Commercial, NSW Treasury, 15 June 2023, p 35.

²¹¹ Evidence, Mr Hong, 15 June 2023, p 36.

²¹² Evidence, Ms Sonya Campbell, Deputy Secretary, Commercial, NSW Treasury, 15 June 2023, p 35; Evidence, Ms Sonya Campbell, Chair of the NSW Procurement Board and Deputy Secretary, Commercial, NSW Treasury, 8 August 2023, p 21.

²¹³ Answers to questions on notice, NSW Treasury, received 11 July 2023, p 3.

use of consultants, with detailed information to be provided in relation to consultancy expenditure above \$50,000 and an aggregate of the number and total of consultancy expenditure below \$50,000, with the information reported in the financial reports of the agencies.²¹⁴

- 2.64** However, the Health Services Union believed that a full review of all consulting contracts was necessary. It recommended that the NSW Government 'immediately review and report on all NSW Government consulting contracts awarded above \$50,000 to assess the quality of work provided by consultants and if net positive value propositions can be identified'.²¹⁵
- 2.65** Separately, Per Capita proposed that having an office within each department that is responsible for evaluating the efficacy of contracts and whether all appropriate guidelines were adhered to.²¹⁶
- 2.66** The committee heard that consulting firms often conduct their own version of a post-engagement review. For example, Deloitte Australia explained the process it undertakes after a project is completed, highlighting that a quality assurance partner is held to account for the quality of the proposal and delivery, as well as making sure each project has a lasting impact.²¹⁷ It is their role to 'hold the lead engagement partner to task'.²¹⁸ A client service assessment is completed by an independent partner following delivery of the project during which time feedback from the client is sought.²¹⁹

Transparency around the engagement of consultants

- 2.67** Transparency around the engagement of consultants is necessary to enable a proper assessment of both its quality and value for money. The committee heard that the devolved structure of the NSW Government may hinder proper oversight by NSW Procurement of agency use of consulting services and thwart efforts to identify spend.
- 2.68** Various inquiry participants voiced their concern about a lack of transparency in relation to spending on consulting services.²²⁰ Mr Hayes was of the view that health management is not forthcoming on the use of consultants, observing that 'I couldn't tell you how many consultants are engaged by NSW Health, let alone the 17 local health districts, let alone the ambulance service as well'.²²¹ Ms Lauren Hutchins, NSW/ACT/Qld Assistant Secretary, Health Services Union, added that in relation to the use of consultants by local health districts, 'there is no transparency. There is a lack of consistency in terms of how the LHDs are able to engage with these consultancy firms'.²²²

²¹⁴ Evidence, Ms Marina van der Walt, Deputy Secretary, Financial Management and Services, NSW Treasury, 8 August 2023, p 22.

²¹⁵ Submission 17, Health Services Union, p 1.

²¹⁶ Evidence, Ms Dawson, 28 July 2023, p 33.

²¹⁷ Evidence, Mr Allan Mills, NSW Public Sector Leader, Partner, Deloitte Australia, 16 August 2023, p 40.

²¹⁸ Evidence, Mr Mills, 16 August 2023, p 40.

²¹⁹ Evidence, Mr Mills, NSW, 16 August 2023, p 41.

²²⁰ Evidence, Mr Hayes, 9 August 2023, p 14; Evidence, Dr Catherine Williams, Research Director, Centre for Public Integrity, 8 August 2023, p 2.

²²¹ Evidence, Mr Hayes, 9 August 2023, p 14.

²²² Evidence, Ms Hutchins, 9 August 2023, p 15.

2.69 Whether the use of consulting services by some agencies was of value, was questioned by stakeholders on occasion. For example, the committee heard that Fire and Rescue NSW had engaged a consultant at above the normal rates.²²³ While the Fire Brigade Employees' Union of NSW acknowledged that the use of consultants is important in certain circumstances, it was highly critical of those situations where it appeared that there was a lack of good governance around the appointment and use of consulting services:

On the documents that have been made available through our GIPAA applications and an NCAT Tribunal matter that followed, we can state that those issues are substantive and they include missing contracts for an engagement of close to half a million dollars of public money on at least one consultant... some systemic cultural and structural issues related to due diligence, good governance and, in particular, record keeping; a failure to declare conflicts of interest for known and documented conflicts, or at the very least perceived conflicts; a lack of appropriate procurement processes to substantiate a required competitive process to appoint consultants; significant overspend on consultants well outside of initial proposals; and the misreporting of consultant expenditure in disclosures in annual reports.²²⁴

2.70 Dr Catherine Williams, Research Director, Centre for Public Integrity, suggested that the default position should be that information around contracts between government agencies and consulting firms is disclosed. It was her view that this would enable the proper scrutiny of contracts and in turn foster public trust in the value for money of such contracts.²²⁵ Dr Williams outlined how this could work practically:

Perhaps a practical solution in terms of facilitating the level of disclosure required for people to have confidence that they're getting value for money is that when a contract is disclosed the scope of work, for example, could be uploaded with that disclosure so that people can see precisely what is being bought. And, at the end of the project, at delivery if it's an advice-based project, then why can the delivery outcome not also be uploaded to the same repository?²²⁶

2.71 Other transparency measures were also endorsed by stakeholders. Ms Giselle Tocher, Acting Executive Director, Corruption Prevention Division, NSW Independent Commission Against Corruption, expressed support for the general proposition that the e-Tender website be reformed into a permanent record, facilitating transparency and public oversight.²²⁷

2.72 Mr Bill Browne, Director, Democracy and Accountability Program, Australia Institute, argued that consultants' reports should be made public: 'It's my thinking that, in most cases, the reports that public money pays for should be made publicly available, and public attention is going to be one of the best ways of assessing whether these consultants reports really hold up'.²²⁸ Mr Browne then went further suggesting that there could be an argument for consultants who

²²³ Evidence, Mr Fewtrell, 9 August 2023, p 6.

²²⁴ Evidence, Mr Jonathan Wright, Senior Organiser, Fire Brigade Employees' Union of NSW, 9 August 2023, pp 23-24.

²²⁵ Evidence, Dr Williams, 8 August 2023, p 4.

²²⁶ Evidence, Dr Williams, 8 August 2023, p 4.

²²⁷ Evidence, Ms Giselle Tocher, Acting Executive Director, Corruption Prevention Division, NSW Independent Commission Against Corruption, 30 June 2023, p 9.

²²⁸ Evidence, Mr Bill Browne, Director, Democracy and Accountability Program, Australia Institute, 28 July 2023, pp 23-24.

have done government work to appear as part of the annual Budget Estimates process, noting that:

Similarly... our thinking when looking at Senate estimates is that if you are going to keep consultants doing some of the core work of government, then it makes sense that they should be subject to some of the same scrutiny measures that public servants are subject to. Being called up to budget estimates seemed like one natural way to do that.²²⁹

2.73 Monitoring and enforcement is examined in Chapter 5.

Avoiding engagement creep

2.74 An associated issue around transparency was that of engagement creep, where the initial engagement of a consultant is subsequently extended, including in situations where the value of extensions exceeded that of the initial engagement. Ms Margaret Crawford, Auditor-General for New South Wales, described how the Audit Office had seen situations where there 'is an initial engagement and then that engagement is extended and extended. In some of the cases we referenced in our report, the value of the extensions far exceeded the initial engagement'.²³⁰

2.75 As noted in Chapter 1, in her submission, the Auditor-General provided an example of engagement creep in relation to the design and implementation of the Transport Asset Holding Entity (TAHE). The submission outlined how 16 consulting firms worked on 26 engagements connected with the design and implementation of TAHE and that despite an initial estimate of \$12.94 million, the final cost of the engagements was \$22.56 million. Further, in eight cases the value of at least one variation exceeded that of the initial engagements and the value of 11 out of 23 contract variations exceeded the threshold for a tender.²³¹

2.76 The committee also heard positive examples of how extensions could be avoided. When questioned about the use of consultants beyond the purposes for which they were usually engaged, Mr Tom Gellibrand, Head of Projects, Infrastructure NSW, assured the committee that the targeted engagement of contractors by Infrastructure NSW had enabled it to avoid that situation.²³²

2.77 The committee also received evidence that numerous contracts were varied by Sydney Metro, as described in the case study below.

Case study - Sydney Metro²³³

Sydney Metro is the government agency responsible for delivering a high-capacity, high-frequency metro rail network in Greater Sydney. This project includes operation of the Metro Northwest line,

²²⁹ Evidence, Mr Browne, 28 July 2023, p 24.

²³⁰ Evidence, Ms Margaret Crawford, Auditor-General for New South Wales, 15 June 2023, p 2.

²³¹ Submission 1, Auditor-General for New South Wales, p 3.

²³² Evidence, Mr Gellibrand, 5 September 2023, p 27.

²³³ The sources for information in this case study are: Evidence, Ms Fiona Trussell, Chief Finance and Commercial Officer, Sydney Metro, 5 September 2023, p 42; Answers to questions on notice, Sydney Metro, received 4 October 2023, pp 3, 14 and 17.

and the three metro lines currently being constructed, namely City and Southwest, West, and Western Sydney Airport. It involves a portfolio of works worth more than \$60 billion.

Sydney Metro was established as a corporation under the *Transport Administration Act 1988*. It uses a blended workforce so as to provide the necessary expertise required at different stages of a project. In 2021-22, Sydney Metro spent \$2.7 million on consultants across 12 engagements.

Due to the skills shortages in the current infrastructure market, many specialised resources are only available as professional service contractors. While about 70 percent of the Sydney Metro workforce are government employees, the remaining 30 per cent are labour hire and professional service contractors who are engaged as part of its Integrated Teams. As of September 2023, it had 520 Integrated Team Members, who are a 'contracted resource engaged to provide services that support the delivery of [Sydney Metro's] core work'.

Sydney Metro has had to extend or vary contracts on a number of occasions, with 1,774 variations across 436 contracts since 1 January 2020. As an example of a variation made, the amount payable to E3 Advisory increased from \$262,405 to \$660,000 when an additional month's work was required, as a team of professionals was needed for the work rather than just one contractor. On another occasion, a contract with O'Connor Marsden for advisory services increased from \$331,238 to \$1.153 million.

- 2.78** The Deputy Auditor-General for New South Wales explained the negative repercussions associated with the overuse of extensions:

The Procurement Policy Framework states that routinely exercising extension options or rolling over contracts can reduce competition and limit access to new suppliers. For those reasons the policy framework states that agencies must only extend contracts where it can be demonstrated that doing so will deliver value for money.²³⁴

Committee comment

- 2.79** Throughout the inquiry it was clear that there is a role for consulting services, especially when specialist expertise is genuinely required and it is not appropriate for a government agency or department to develop the requisite knowledge and skillset among its own workforce. However, we caution against the default use of consulting services and urge the NSW Government to ensure that its use of consultants is effective, efficient, and strategic. While the committee is pleased that the NSW Government has in recent years committed to reducing its expenditure on consultants, we express our concern about its lack of progress, and note that its expenditure in this area remains high. We are greatly concerned about what appears to be a reliance on the Big Four consulting firms, which are the beneficiaries of one-quarter of government expenditure on consulting services.
- 2.80** It was evident to the committee that confusion over whether departmental or agency spend should be classified as 'consultant' or 'contractor' made it difficult to determine exactly what is being spent on consultants as well as on contractors. This is alarming as it hinders true accountability, presenting obstacles to the proper comparison of the spending of different agencies. It also prevents certainty that the smaller spend by some agencies on 'consulting' was not simply the result of consultant expenditure being incorrectly classified as contractor expenses.

²³⁴ Evidence, Mr Goodwin, 15 June 2023, p 6.

Finding 1

The inability of the NSW Government to readily disclose the total amount it spends on consultants across agencies is of significant concern from a transparency and accountability perspective.

- 2.81** The committee is also concerned about the inability to easily determine when contractors are acting in a role that is designated as a permanent public sector position. It is important that these details are readily available in order for there to be proper disclosure, transparency and accountability, especially in relation to the filling of these positions by consultants and contractors from the Big Four. It is important that this data can be monitored over time to ensure that the tendency to use contractors to fill public sector roles trends downwards.
- 2.82** While we accept that there have been attempts to clarify the distinction between a contractor and consultant, it is clear that more needs to be done to ensure that the definitions are properly interpreted and correctly applied by individual government agencies. It is important that the amount spent on contractors as opposed to consulting services can be easily and accurately determined. We accordingly recommend that the NSW Government revise the definitions of a 'consultant' and a 'contractor' to ensure that the amount spent on consultants and contractors is separately disclosed and readily available.
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Recommendation 1

That the NSW Government revise the definitions of a 'consultant' and a 'contractor' to ensure that the amount spent on consultants and contractors is separately disclosed and readily available.

- 2.83** Further, the committee appreciates that having multiple sources of data on consultant expenditure is not without benefit and may serve different purposes. However, we are firmly in agreement with the Auditor-General that a single, definitive data source must be developed. This will foster transparency and proper accountability when it comes to government spending. Of particular concern to the committee, is the lack of transparency around consultant expenditure by local health districts, especially when their spending in this area is not insignificant. A single data source that captures this spending as well must be a priority, and the committee recommends that the NSW Government prioritise the development of a single, authoritative data source capturing all government spending on consultants, including that of local health districts. To ensure that this record is complete, we also recommend that any exemptions from the requirement that agencies report on consultant expenditure are removed and government agencies previously exempt from disclosure of consultant expenditure be required to disclose its historical expenditure. The level of complexity experienced by the committee when attempting to determine government spending on consultants is unacceptable.
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Recommendation 2

That the NSW Government prioritise the development of a single, authoritative data source capturing all government spending on consultants, including that of local health districts.

Recommendation 3

That the NSW Government ensure:

- any exemptions from the requirement that agencies report on consultant expenditure are removed
 - government agencies previously exempt from disclosure of consultant expenditure be required to disclose its historical expenditure.
-

- 2.84** The committee does not dispute that there is a role for consultants in supporting the work of government agencies. Further, we accept that the public sector is not always competitive in the wages it is able to offer to otherwise potential candidates and may be required on occasion to outsource the requisite expertise. However, we stress that for there to be real value for money, consultants must be used sparingly and appropriately. The committee was accordingly pleased to learn of the practices adopted by Infrastructure NSW and TCorp to ensure that their use of consultants was strategic, efficient and effective. However, it is discouraging that these examples appeared to be the exception to the norm.
- 2.85** The committee is firmly of the view that consulting services should not be used to complete work considered core to the role of the public sector. The evidence is clear that the inappropriate use of consultants can be demoralising for an agency's employees. While we were encouraged to hear that some agencies are seeking to rebuild internal capability and reduce their reliance on consulting services, it is disheartening that there are other examples when agencies could have made better use of the skills available internally.
- 2.86** In order to counter the current over-reliance on consultants and contractors, the NSW Government will need to take deliberate steps to ensure that they are not used inappropriately, and to also prevent them from being seen as government employees over time. It is also important that consultants are not used as part of a recruitment process where other consultants or contractors are under consideration. The committee accordingly recommends that the NSW Government take specific action to this effect.

Recommendation 4

That the NSW Government ensure any consultants or contractors engaged by government departments or agencies are:

- only hired for the shortest possible period to undertake the required work and as a last resort, whereby departments and agencies need to actively demonstrate this 'last resort' necessity
 - not involved in core government work, that is, work for which departments and agencies do not have their own inhouse capacity or immediate way of developing the skills and capacity consultants can bring
 - able to uplift the capability and skills of the public sector
 - clearly identified as consultants or contractors when working within government agencies, including by email systems, business cards, name badges, security passes, and staff directories
 - not involved in the recruitment process for other consultants and contractors.
-

2.87 In order to prevent government agencies from defaulting to the use of consultants because of a perceived ease in continuing to engage them, it is important to ensure that there is proper oversight of engagements.

2.88 The proper evaluation of consultant engagements is essential to ensuring that the services provided were of value. It is of great concern that the Auditor-General for New South Wales found that most agencies do not have systems in place for managing or evaluating consultant performance despite it being a requirement that agencies conduct such a review. Ensuring that post-engagement evaluations occur must be prioritised. Accordingly, the committee recommends that the NSW Government strengthen the requirements for agencies to conduct post-engagement evaluations so as to ensure that they are viewed as a compulsory component of substantial engagements of consultants. A report on the outcomes of these reviews should be supplied to NSW Procurement. NSW Procurement should consider the findings of these reports when determining preapproval of suppliers. Further, it is recommended that NSW Procurement report to both Houses of the NSW Parliament on an annual basis to provide details of any post-engagement evaluations that concluded the work completed by consultants was not to the appropriate standard.

Finding 2

Post-engagement reviews by NSW government agencies have to date been rarely undertaken in any meaningful manner.

Recommendation 5

That the NSW Government strengthen the requirements for agencies to conduct post-engagement evaluations to ensure that they are viewed as a compulsory component of substantial engagements of consultants. A report on the outcomes of these reviews should be supplied to NSW Procurement.

Recommendation 6

That NSW Procurement report to both Houses of the NSW Parliament on an annual basis to provide details of any post-engagement evaluations that found work completed by consultants was not to the appropriate standard.

- 2.89** The essential nature of the proper transparency around the use of consultants is clear. It is vital that spending in this area can be properly scrutinised and governments held to account. It is clear to the committee that systems, such as eTender, need to be redesigned to ensure they are fit for purpose. The committee is of the view that, unless there is a valid reason involving Cabinet in confidence, commercial in confidence, and personal privacy, the default position should be that all contracts are disclosed and recommend that the eTendering website be made into a permanent record of government engagements, with greater detail included. It is also our recommendation that any reports that have been purchased with public money should be made publicly available unless they fall within clearly defined exceptions. In addition, reports prepared by consultants, and the government reports based on them, should include full disclosure of the consultancies used and relevant details of their engagement.
-

Finding 3

The eTender system should be urgently redesigned to ensure timely, accessible and complete records of all government tenders. These records should be available at all times to enable effective public scrutiny.

Recommendation 7

That the NSW Government develop the eTendering system and website into a permanent record of government procurement that includes:

- the disclosure of all government tenders
- greater detail in the description of contracts
- specification of the reasons for either limited or no tender
- specification of the reasons for all contract extensions and amendments.

Recommendation 8

That the NSW Government require all government reports, or other work prepared using consultants, to disclose which consultancies were used, the amount they were paid, and what conflicts of interest were disclosed.

- 2.90** Finally, the committee is persuaded that consultants who work for the public service should be held accountable for their work. To this end, we recommend that the Legislative Council consider amending the resolution establishing the Public Accountability and Works Committee to require the committee to conduct a review of consulting services, in relation to any work conducted for, or on behalf of, the NSW Government, at least once every Parliamentary term.
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Recommendation 9

That the Legislative Council consider amending the resolution establishing the Public Accountability and Works Committee to require the committee to conduct a review of consulting services, in relation to any work conducted for, or on behalf of, the NSW Government, at least once every Parliamentary term.

Chapter 3 Ramifications for the public sector

The NSW Government's use of consulting services has numerous impacts on the public sector. This chapter examines the risks for the public service when consultants are inadequately managed and heavily relied on, including reducing the capacity of the public sector. It also notes that consistently engaging consultants and contractors creates a cycle of use which inhibits the development and implementation of government policy. It then outlines opportunities to counter this reliance, including the possibility of a separate consulting arm of government.

Using consultants to complete core work

- 3.1** As discussed in Chapter 2, most stakeholders acknowledged that when used appropriately consultants play a role in supporting the work of NSW government agencies.²³⁵ However, Ms Margaret Crawford, Auditor-General for New South Wales, advised that agencies need to ensure engagements are '... strategic and seeking that expert, independent advice and not just replacing the work that may normally be done by public servants'.²³⁶ Moreover, the committee was presented with numerous examples of where consultants may have been engaged to complete the core work of the public service.
- 3.2** Stakeholders were primarily concerned that using consultants in this manner risks hollowing out the public sector. As examined in the following sections, undermining the capacity and capability of the public service was considered to have significant ramifications for its ongoing viability.
- 3.3** Other concerns raised about the impact of using consulting services on the public service include:
- may not provide value for money (examined in Chapter 2)
 - increasing costs and creating divisions between management and employees²³⁷
 - negatively impacting on staff morale²³⁸
 - inhibits policy being carried out under the control of the government.²³⁹

²³⁵ Evidence, Ms Margaret Crawford, Auditor-General for New South Wales, Audit Office of New South Wales, 15 June 2023, p 2. See also, Evidence, Dr Catherine Williams, Research Director, Centre for Public Integrity, 8 August 2023, p 3, and Submission 7, Southern Youth and Family Services, p 3.

²³⁶ Evidence, Ms Crawford, 15 June 2023, p 2.

²³⁷ Evidence, Mr Gary Wilson, Delegate and Former Secretary, APA(NSW), 8 August 2023, p 36.

²³⁸ Evidence, Mr Gerard Hayes, NSW/ACT/Qld Secretary, Health Services Union, 9 August 2023, p 15.

²³⁹ Evidence, Dr Williams, 8 August 2023, p 3.

The risk of hollowing out the public sector

- 3.4** Many inquiry participants expressed concern that the excessive use of consulting services by agencies risks hollowing out the public sector.²⁴⁰ The term 'hollowing out' refers to weakening the internal capability, competence and capacity of the government through the use of external, private providers such as consultants.²⁴¹ For example, the Public Service Association of NSW argued that expertise traditionally provided by the public service was increasingly outsourced to the private sector, leaving the core public service 'incapable' of functioning.²⁴²
- 3.5** This sentiment was echoed by Dr Erin Twyford, Senior Lecturer, University of Wollongong, and Certified Accountant (private capacity), who said that the government has been contracting out work that is supposed to be performed by people in-house.²⁴³
- 3.6** Likewise, Dr Catherine Williams, Research Director, Centre for Public Integrity, told the committee that the public service had been 'systemically hollowed out' and 'effectively decimated', so that it no longer possessed the critical skills required to carry out its functions, as many of its traditional roles had been outsourced to private firms.²⁴⁴ Dr Williams supported using the public service for 'government-only work' and exclusively using consultants where there is an acute need that cannot be met by this sector, such as the provision of urgent legal advice.²⁴⁵
- 3.7** Stakeholders argued that undermining the capacity of the public sector has significant consequences, including:
- increasing the dependence on external consultants
 - discouraging the government from questioning, or challenging, the services it engages
 - eroding the concept of frank and fair advice
 - decreasing the ability of the public service to attract, recruit and retain talent.
- 3.8** These consequences are discussed in the following sections.

Reinforcing dependence on consultants

- 3.9** The committee heard that hollowing out the public sector reinforces the government's dependence on consultants as providers of specialised skills. The Public Service Association of NSW explained that relying on consultants has evolved into a cycle where the public service deems its internal expertise unnecessary as its needs can be more effectively acquired on an 'as

²⁴⁰ Submission 2, Professor Fran Baum AO PhD and Dr Julia Anaf PhD, pp 1-3. See also Submission 20, Public Service Association of NSW, p 1, Submission 3, Mr Joel MacKay, p 1, Submission 27, The Australia Institute, p 3,5,22.

²⁴¹ Submission 20, Public Service Association of NSW, p 5.

²⁴² Submission 20, Public Service Association of NSW, p 1 and 5.

²⁴³ Evidence, Dr Erin Twyford, Senior Lecturer, University of Wollongong, and Certified Accountant (private capacity), 28 July 2023, p 6.

²⁴⁴ Evidence, Dr Williams, 8 August 2023, p 4.

²⁴⁵ Evidence, Dr Williams, 8 August 2023, p 3.

and when' basis by the private sector.²⁴⁶ The association concluded that this may render the public service unable to function, and open to replacement by external organisations considered more capable of meeting demands.²⁴⁷

- 3.10** In its submission, the Public Service Association of NSW asserted that the need to use external consultants had been exacerbated by the removal of various specialist and technical roles within the public sector.²⁴⁸ Additionally, the public sector may not always be able to offer competitive pay rates for roles with specialised skills, further hollowing out the public service. The provision of competitive salaries is examined later in this chapter.
- 3.11** Complicating matters further, the Public Service Association of NSW argued that, unlike the public sector, short-term private sector 'solutions' were not necessarily committed to solving issues long-term.²⁴⁹ It critiqued the outsourcing of public service business, declaring that those services were now being provided by individuals and organisations motivated by profit, and not the 'noble' motivations of public service.²⁵⁰
- 3.12** Unions NSW referred to the increasing use of private consultants as 'privatisation by stealth', and demanded a skilled and thriving public sector, as opposed to a 'shadow government' of consulting firms'.²⁵¹
- 3.13** In its submission, Unions NSW referred to research by The Insights Centre, which examined the skills crisis caused by the hollowing out of the public sector. The research found that the number of engineers employed in the public sector decreased from 18.6 per cent in 2006 to 13.2 per cent in 2021, despite major infrastructure projects such as West Connex, Sydney Metro and Western Sydney Airport. At the same time, the rate of engineers working in the private sector has continued to grow, albeit at a smaller rate than before.²⁵²
- 3.14** However, Unions NSW also identified other factors that were also contributing to the 'skills crisis' including:²⁵³
- the inability of the public service to attract a younger workforce
 - the public wages cap decreasing the appeal of a public sector career (discussed below)
 - certain public sector benefits are no longer available.²⁵⁴
- 3.15** A number of major consulting firms told the committee that they seek to build the capacity of the public service during engagements with the NSW Government. For example, EY

²⁴⁶ Submission 20, Public Service Association of NSW, p 5. See also Evidence, Mr Stewart Little, General Secretary, Public Service Association of NSW, 16 August 2023, p 62.

²⁴⁷ Submission 20, Public Service Association of NSW, p 5.

²⁴⁸ Submission 20, Public Service Association of NSW, pp 5-6.

²⁴⁹ Submission 20, Public Service Association of NSW, p 6.

²⁵⁰ Submission 20, Public Service Association of NSW, p 2.

²⁵¹ Submission 20, Unions NSW, p 2.

²⁵² Submission 26, Unions NSW, pp 12-13, quoting The Insights Centre, *Engineering a Better Future: Australia's Growing Crisis in Engineering Skills*, March 2023, pp 18-21.

²⁵³ Submission 26, Unions NSW, p 12.

²⁵⁴ Submission 20, Unions NSW, p 13.

emphasised its focus on capacity building through hands-on coaching and shadowing and the handover of tools and other artefacts.²⁵⁵

- 3.16** Scyne Advisory told the committee that it only takes on projects for the NSW Government if it believes they could add capability to the public sector, providing additional value 'above and beyond'.²⁵⁶ When questioned how it is in the interest of a private consulting firm to improve and enhance government processes and procedures when it would ultimately reduce the consultants' market share, Scyne Advisory highlighted that it pursues purpose over profit, partnering with the public service and committing to building capacity.²⁵⁷
- 3.17** As discussed in Chapter 2, Deloitte highlighted the skills transfer and capability enhancements embedded in its engagement with Schools Infrastructure.²⁵⁸ Mr Allan Mills, NSW Public Sector Leader, Deloitte Australia, also noted that the consulting service does not tender if it believes it will not deliver value.²⁵⁹
- 3.18** KPMG considered a well-informed and 'very capable' public service to be paramount, informing the committee that they often provide tools that their public sector clients can use to skill and train employees.²⁶⁰ Icení argued that capability building should be a requirement rather than an 'add-on'.²⁶¹ It emphasised that capability building helps facilitate discussions, enabling solutions to be co-designed and tested with in-house staff.²⁶²

Reliance on consultants

- 3.19** The *Internal Controls and Governance 2022* report by the Audit Office found that agencies risk 'over-reliance' in using the same consultants.²⁶³ The Auditor-General commented that such reliance discourages agencies from appropriately challenging the consultants, or 'experts'.²⁶⁴ Other stakeholders similarly critiqued the 'undue deference' towards consultants.²⁶⁵ It was further suggested that the overreliance on consultants leads to the loss of institutional and corporate knowledge to the private sector.²⁶⁶

²⁵⁵ Submission 8, EY, p 11 and p 19.

²⁵⁶ Evidence, Ms Diane Rutter, New South Wales Lead, Scyne Advisory, 5 February 2024, p 6. See also Evidence, Mr Richard Gwilym, Acting Chief Operating Officer, Scyne Advisory, 5 February 2024, p 8.

²⁵⁷ Evidence, Mr Gwilym, 5 February 2024, p 8.

²⁵⁸ Evidence, Ms Ursula Brennan, Public Sector Leader, Partner, Deloitte Australia, 16 August 2023, pp 41-43.

²⁵⁹ Evidence, Mr Allan Mills, NSW Public Sector Leader, Partner, Deloitte Australia, 16 August 2023, p 52.

²⁶⁰ Evidence, Mr Paul Low, National Industry Leader, Infrastructure, Government and Healthcare, KPMG, 5 September 2023, p 63.

²⁶¹ Submission 9, Icení, p 4.

²⁶² Submission 9, Icení, p 4.

²⁶³ Submission 1, Auditor-General for New South Wales, p 2.

²⁶⁴ Submission 1, Auditor-General for New South Wales, p 1.

²⁶⁵ Submission 27, The Australia Institute, p 4.

²⁶⁶ Submission 20, Public Service Association of NSW, p 2.

- 3.20** In 2021, the Audit Office had similarly advised that if there is excessive reliance on an 'expert', an agency risks being unable to even converse about a topic without that person being present.²⁶⁷ The oversight body cautioned that this can hinder the assumptions and limitations of the consultant from being genuinely challenged by the engaging agency.²⁶⁸
- 3.21** Additionally, Mr Ian Goodwin, Deputy Auditor-General for New South Wales, Audit Office of New South Wales, highlighted the risk of governments defaulting to consultants due to existing contracts having pre-approval. He noted that it would be far more efficient to keep 'rolling that contract over' than go to the market.²⁶⁹
- 3.22** Public policy think tanks also raised concerns about the potential over-reliance on consultants.²⁷⁰ Indeed, The Australia Institute suggested that being overly reliant on consultants undermines the capacity of an agency to assess, and subsequently manage their consultants.²⁷¹
- 3.23** As discussed in Chapters 2 and 4, other inquiry participants argued that agencies had been over-reliant on consultants for the implementation of the Transport Asset Holding Entity (TAHE).²⁷² Mr Stewart Little, General Secretary, Public Sector Association of NSW, argued that there was a view in the NSW Government that 'the private sector will do that better', warning that defaulting to consultants was creating a 'skill shortage'.²⁷³

'Consultant shopping'

- 3.24** Throughout the inquiry, a number of stakeholders raised concerns about the phenomenon of 'consultant shopping', that is, the practice of government agencies seeking consultants who will provide pre-determined outcomes.²⁷⁴ As discussed in Chapter 4, the NSW Independent Commission Against Corruption (ICAC) has previously advised NSW government agencies to be cautious not to seek advisers who will agree to give biased advice.²⁷⁵ This was reflected in evidence to the committee, when Ms Giselle Tocher, Acting Executive Director, NSW Independent Commission Against Corruption, acknowledged the tension that exists for consultants between providing frank and objective advice and telling a client 'what they want to hear'.²⁷⁶

²⁶⁷ Submission 1, Auditor-General for New South Wales, p 1. See also Auditor-General for New South Wales, *State Finances 2021*, p 23.

²⁶⁸ Auditor-General for New South Wales, *State Finances 2021*, p 23.

²⁶⁹ Evidence, Mr Ian Goodwin, Deputy Auditor-General for New South Wales, Audit Office of New South Wales, p 3.

²⁷⁰ See, for example, Evidence, Ms Sarah McKenzie, Research Associate, Per Capita, 28 July 2023, p 28.

²⁷¹ Evidence, Mr Rod Campbell, Research Director, The Australia Institute, 28 July 2023, p 26.

²⁷² Submission 5, Emeritus Professor James Guthrie, AM, FCPA, Professor John Dumay, CA, Professor Jane Andrew, CPA and Dr Erin Twyford, CA, p 3.

²⁷³ Evidence, Mr Little, 16 August 2023, p 62.

²⁷⁴ See, for example, Submission 20, Public Service Association of NSW, p 1; Submission 7, Southern Youth and Family Services, p 3.

²⁷⁵ Independent Commission Against Corruption NSW, *Obtaining independent advice: dos and don'ts*, December 2021, pp 1-2.

²⁷⁶ Evidence, Ms Giselle Tocher, Acting Executive Director, Corruption Prevention Division, NSW Independent Commission Against Corruption, 30 June 2023, p 2.

- 3.25** The Public Service Association criticised the NSW Government for consultant shopping arguing it undermines the Westminster system of government:

The idea of 'free and frank' advice which supposedly epitomises Westminster style government has been at best devalued as senior public servants seek 'friendly' consultants to supposedly offer unbiased advice to ministers – so called 'consultant shopping'.²⁷⁷

- 3.26** Mr Little stated that this practice enables agencies to find an 'ideologically, politically acceptable' answer.²⁷⁸

- 3.27** Per Capita raised a similar concern.²⁷⁹ Likewise, Dr Catherine Williams, Research Director, Centre for Public Integrity, posited that outsourced firms may often 'say what the Government wants to hear', in order to please potential clients and procure future work.²⁸⁰ Dr Williams expanded on this, noting the difficulty in saying something to a potential buyer 'that you know they don't want to hear'.²⁸¹

- 3.28** A number of witnesses provided examples of NSW government agencies allegedly consultant shopping. The case study below discusses the contracting of BAEconomics by NSW Planning for certain fossil fuel projects.

Case study – BAEconomics and NSW Department of Planning and Environment²⁸²

The Australia Institute is an independent public policy think tank. Its submission included a number of case studies in which the NSW Department of Planning and Environment (DPE) was alleged to have engaged specific consultants to provide desired advice.

The Australia Institute was particularly critical of the engagement of BAEconomics in relation to the Dendrobium coal mine extension and the Narrabri Gas projects. Mr Bill Browne, Director, Australia Institute, was of the view that DPE knowingly appointed an industry-aligned consultant to review controversial projects. Likewise, Mr Rod Campbell, Research Director, Australia Institute, suggested that the NSW Government had approached BAEconomics because they 'knew what kind of opinion they were going to get there'.

The Australia Institute concluded that DPE was under pressure to approve controversial projects so engaged an industry-aligned economist, rather than the usual consultants used by them, in the expectation of a pro-industry opinion.

²⁷⁷ Submission 20, Public Service Association of NSW, p 1.

²⁷⁸ Evidence, Mr Little, 16 August 2023, p 57.

²⁷⁹ See, for example, Evidence, Ms Sarah McKenzie, Research Associate, Per Capita, 28 July 2023, p 28.

²⁸⁰ Evidence, Dr Williams, 8 August 2023, p 4.

²⁸¹ Evidence, Dr Williams, 8 August 2023, p 4.

²⁸² Evidence, Mr Bill Browne, Director, Democracy and Accountability Program, Australia Institute, 28 July 2023, p 21; Submission 27, The Australia Institute, pp 12-13; Evidence, Mr Campbell, 28 July 2023, p 23; Submission 20, Public Service Association of NSW, p 7. Note the DPE is now two departments; the Department of Planning and the Department of Climate Change, Energy and Environment.

- 3.29** Certain consulting services told the committee that they do not participate in this practice. EY emphasised that it would not respond to any requests for quotation that sought a 'pre-determined outcome or recommendation'.²⁸³
- 3.30** The committee received some suggestions as to how consultant shopping could be minimised. Mr Paul Low, National Industry Leader, Infrastructure, Government and Healthcare, KPMG, recommended the application of a consistent framework around value-for-money assessment in order to ensure independent advice is provided to government clients.²⁸⁴ Mr Low emphasised that consultancies want to be clear about the framework they apply, so they can exercise independent judgement, and work through established frameworks to support better decision-making.²⁸⁵
- 3.31** The Public Service Association of NSW argued that a well-resourced Opposition, independent and effective integrity agencies, and a free press would provide checks and balances to government, and prevent them from timing the release of reports that are unfavourable to government policy priorities and initiatives.²⁸⁶ EY similarly noted while it is the responsibility of the agency to manage release of their work products, most reports are nonetheless accessible via freedom of information requests and from the NSW Legislative Council.²⁸⁷
- 3.32** Noting that it is 'imperative' to move away from consultant shopping, the Public Service Association of NSW highlighted the establishment of the Australian Centre for Evaluation, which seeks to improve the volume, quality and use of evaluation evidence to support better policy in Australia.²⁸⁸ The association viewed this as the shift that is needed to overcome consultant shopping and for policy to be driven by empirical evidence instead of 'ideology and political whim'.²⁸⁹

Uncompetitive public sector salaries

- 3.33** The committee heard that differing salaries between the public and private sectors may be causing some public servants to leave public service, further reducing capacity of the public sector. Ms Emma Dawson, Executive Director, Per Capita, maintained that a refusal to invest in expertise was resulting in the loss of the 'middle tranche of experts' in the public service at both state and federal levels.²⁹⁰ Whilst the public service still trains graduates and possesses entry-level positions, Ms Dawson cautioned that it is losing individuals mid-career to 'highly paid external consultancy jobs'.²⁹¹
- 3.34** Ms Sarah McKenzie, Research Associate, Per Capita, described the number of people in the public sector as on a downward decline:

²⁸³ Submission 8, EY, p 21.

²⁸⁴ Evidence, Mr Low, 5 September 2023, p 63.

²⁸⁵ Evidence, Mr Low, 5 September 2023, p 64.

²⁸⁶ Submission 20, Public Service Association of NSW, p 8.

²⁸⁷ Submission 8, EY, p 23.

²⁸⁸ Submission 20, Public Service Association of NSW, p 7.

²⁸⁹ Submission 20, Public Service Association of NSW, p 7.

²⁹⁰ Evidence, Ms Emma Dawson, Executive Director, Per Capita, 28 July 2023, p 29.

²⁹¹ Evidence, Ms Dawson, 28 July 2023, p 29.

It's also that it's eating itself. If you're hollowing out the public sector, where is that expertise going? Are they going to these consulting firms? Are they ever going to come back to a public sector if they can earn double as much over there as well?²⁹²

- 3.35** Mr Tom Gellibrand, Head of Projects, Infrastructure NSW, similarly noted the difference between remuneration in the private and public sectors and acknowledged that the more specialised a role, the higher the pay available in the private sector.²⁹³ Mr Gellibrand commented that the public sector finds it difficult to compete with the private sector in terms of salaries, emphasizing that individuals who choose to work in the private sector can earn 'considerably more'.²⁹⁴
- 3.36** In contrast, due to an exemption from the *Government Sector Employment Act 2013*, state-owned corporation, TCorp, claimed to be able to retain 'expert' employees because of its ability to not hold individuals to the 'particular pay scales within government'.²⁹⁵ Mr David Deverall, Chief Executive, TCorp, recognised the benefits of competitive pay as part of the attraction for graduates to work at the organisation, which invites talent and simultaneously aids in building capability.²⁹⁶ He gave the example of a team which had previously been 'very reliant' on external consultants, but had grown from 'three to four' to 20 to 25 individuals. Mr Deverall advocated that the best culture is 'homegrown', with TCorp preferencing the promotion of its own talent, rather than 'bringing people in at the very high levels'.²⁹⁷
- 3.37** Inquiry participants discussed opportunities to improve the parity between the remuneration for the public service and consultants. Dr Twyford commented that attracting talent to the public service would avoid the government paying private sector costs for a 'shadow public service'.²⁹⁸ Unions NSW suggested that consultants should be paid the same as equivalent public sector staff when engaged in similar roles, and that the NSW Government reinvest savings from reduced engagements of consulting to fund competitive wages and salaries for public servants.²⁹⁹
- 3.38** The Public Service Association of NSW supported the NSW Government paying experts commensurate with their skills and experience.³⁰⁰ The association referred to proposed changes to federal laws that would ensure that staff are paid the same irrespective of whether they are labour hire or permanent staff.³⁰¹

²⁹² Evidence, Ms McKenzie, 28 July 2023, p 29.

²⁹³ Evidence, Mr Tom Gellibrand, Head of Projects, Infrastructure NSW, 5 September 2023, p 31.

²⁹⁴ Evidence, Mr Gellibrand, 5 September 2023, p 30.

²⁹⁵ Evidence, Mr David Deverall, Chief Executive, NSW Treasury Corporation, 6 September 2023, p 29.

²⁹⁶ Evidence, Mr Deverall, 6 September 2023, p 30.

²⁹⁷ Evidence, Mr Deverall, 6 September 2023, p 30.

²⁹⁸ Evidence, Dr Twyford, 28 July 2023, p 6.

²⁹⁹ Submission 26, Unions NSW, p 4.

³⁰⁰ Evidence, Mr Little, 16 August 2023, p 60.

³⁰¹ Evidence, Mr Little, 16 August 2023, p 59. Note, the Australian Government passed new workplace laws as part of its 'Closing Loopholes' legislation in April 2024.

- 3.39** Infrastructure NSW concurred that the public service could attract staff by reviewing how much people with particular skills are paid.³⁰² Mr Gellibrand suggested that more competitive pay and investing in the public sector workforce could reduce the cost of contractors in the long run.³⁰³
- 3.40** Another option raised was the possibility of introducing post-engagement separation periods to limit the ability of high-level public servants being able to move straight into employment with large consulting firms. Dr Williams advised that she was not aware of any jurisdictions that have imposed post-employment separation periods, other than in relation to working for a lobbying group.³⁰⁴ However, she posited that the introduction of such a period would allow networks and knowledge to dilute prior to commencing work in the private sector:

You don't want people, with the benefit of their public role funded by the taxpayer able to build up networks and knowledge over a period, to be able to straightaway move to an organisation that knows the value of that network and knows the value of that knowledge – and that's why it's prepared to pay top dollar for it – being able to benefit in a way that is not fair.³⁰⁵

Countering the reliance on consultants

- 3.41** Throughout the inquiry the committee received various suggestions as to how the NSW Government could counter its dependence on consultants, namely by investing in its workforce, and attracting and maintaining talent. Additionally, ensuring knowledge and skills are transferred from consultants to agencies can help build capacity and lessen reliance on consultants for future engagements, as could the possibility of establishing a distinct, in-house consulting arm within the NSW Government.

Investing in the capacity and capability of the public sector

- 3.42** There was a perception amongst inquiry participants that governments are defaulting to the use of consultants because of a lack of investment in in-house capacity. Stakeholders, such as Southern Youth and Family Services, suggested that this can be counterbalanced by building the capacity and capability of the public service.³⁰⁶ Likewise, Professor John Dumay, Professor of Accounting and Finance, Macquarie University (private capacity), urged the government to 'empower' the public service by investing in capacity building and creation.³⁰⁷
- 3.43** The Australia Institute noted there was broad community consensus that supported up-skilling the public service. The think tank referred to research it had conducted that found that four out of five people agreed that the public service should have the skill and capacity to do work that was currently being outsourced to consultants.³⁰⁸

³⁰² Evidence, Mr Gellibrand, 5 September 2023, p 32.

³⁰³ Evidence, Mr Gellibrand, 5 September 2023, p 32.

³⁰⁴ Evidence, Dr Williams, 8 August 2023, p 6.

³⁰⁵ Evidence, Dr Williams, 8 August 2023, p 6.

³⁰⁶ Submission 7, Southern Youth and Family services, p 4.

³⁰⁷ Evidence, Professor John Dumay, Professor of Accounting and Finance, Macquarie University (private capacity), 28 July 2023, p 3.

³⁰⁸ Evidence, Mr Browne, 28 July 2023, p 21.

- 3.44** Per Capita also supported the rebuilding of the public sector.³⁰⁹ As an example of possible approaches, the think tank referred to reforms introduced by the *Public Service Act 2020* in New Zealand that enabled the sharing of expertise across agencies, the strengthening of cross-departmental collaboration, as well as avenues for growth and career transition for senior leaders.³¹⁰
- 3.45** Other inquiry participants suggested that the government:
- rebuild entry-level jobs, and change recruitment practices³¹¹
 - recognise the public sector as a 'value creator' and not a 'wasteful entity'³¹²
 - invest in high-quality, in-house training programs for public servants³¹³
 - preference the use of in-house expertise before engaging external consultants.³¹⁴
- 3.46** Certain stakeholders noted that the NSW Government has taken steps to invest in the public service. For example, Deloitte was of the view that there had been an increase in the capability and range of skills and talent entering the public service, at both graduate and senior levels, which was described as 'revitalising' the public sector.³¹⁵
- 3.47** Nonetheless, it is likely that, even in a well-resourced and high-functioning public sector, agencies will need to retain the ability to engage consultants on occasion. Ms Sonya Campbell, Chair, NSW Procurement Board, and Deputy Secretary, Commercial, NSW Treasury, acknowledged the need for a balance between investing in core public service capabilities and having the flexibility to seek specialist advice when required.³¹⁶
- 3.48** The case studies below discuss how the State Insurance Regulatory Authority and Service NSW have transitioned away from the use of consultants and rebuilt internal capacity and capability.

³⁰⁹ Evidence, Ms McKenzie, 28 July 2023, p 28.

³¹⁰ Evidence, Ms Dawson, 28 July 2023, p 29; Answers to questions on notice, Per Capita, received 29 August 2023, p 1.

³¹¹ Evidence, Mr Little, 16 August 2023, pp 60-61.

³¹² Submission 5, Emeritus Professor James Guthrie, AM, FCPA, Professor John Dumay, CA, Professor Jane Andrew, CPA and Dr Erin Twyford, CA, p 6.

³¹³ Evidence, Dr Williams, 8 August 2023, p 4.

³¹⁴ Submission 3, Mr Joel MacKay, p 1.

³¹⁵ Evidence, Mr Mills, 16 August 2023, p 43.

³¹⁶ Evidence, Ms Sonya Campbell, Chair, NSW Procurement Board, and Deputy Secretary, Commercial, NSW Treasury, 8 August 2023, p 17.

Case study – State Insurance Regulatory Authority³¹⁷

The State Insurance Regulatory Authority (SIRA) regulates the workers compensation, compulsory third party, and home building compensation statutory insurance schemes in New South Wales. It has historically contracted a significant number of consulting services. However, in April 2022, SIRA launched a strategy to build up its own talent and prioritise internal capability over outsourcing where possible.

When SIRA uses external consultants, it seeks to capitalise on these engagements by co-sourcing to build capability and transfer knowledge to its staff. For example, SIRA contracted EY to provide a series of data management, visualisations, and analytic services around its CTP data. However, SIRA has now actively transitioned this work in-house and has built a regulatory intelligence and analytics division, as well as a digital division. By 30 September 2023, all of the CTP scheme work that was previously completed by EY was due to be undertaken by SIRA staff.

SIRA has also made similar changes to its use of consultants in relation to the workers compensation scheme. By 30 June 2023, it was anticipated that all of the data analytics work that EY used to complete in this area would have transitioned into SIRA.

SIRA's strategy to build and prioritise internal capability has seen a decrease in spending on consultants. It is saving \$100,000 each year through its Digital Premium Regulation Platform by using internal staff to receive insurer filings within the CTP scheme. It has also been able to save \$180,000 annually by insourcing data processing for policy data.

The authority reduced its spend on consultants by 33 per cent between 2019-20 and 2021-22, from \$9.2 million to \$6.3 million. While it has decreased its overall dependence on consultants, SIRA acknowledges it will continue to need access to specialised experts in order for it to be an effective regulator.

Case study – Service NSW³¹⁸

Service NSW has established itself as a leading agency in relation to building internal capacity and capability. Less than 1 per cent of Service NSW/Department of Customer Service procurement spend is on consultants. Spending on consultant engagement is only used for strategic purposes, such as actuaries and professional advice services. Engagements are generally for a professional service rather than a consultancy.

Ms Amanda Young, Chief Operating Officer, Department of Customer Service explained the approach of Service NSW when using consultants: 'we bring them in, help us to set up, and then we transfer the knowledge and build the in-house capability'.

As a result, Service NSW has reduced its reliance on consultants and it now uses in-house teams to conduct customer service design work that had previously been outsourced. The building up of in-house capability is seen as key to its success.

³¹⁷ Evidence, Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority, 16 August 2023, pp 27-28, 34-35.

³¹⁸ Evidence, Ms Amanda Young, Chief Operating Officer, Department of Customer Service, 16 August 2023, p 36.

Specialist government consulting arm

- 3.49** Various stakeholders and witnesses proposed establishing a specialist consulting arm within government as a way of reducing the reliance on external consultants. The Public Service Association of NSW recommended that the NSW Government follow the lead of the Australian Public Service by developing an in-house consultancy service, to remove the need to engage external management consultants in the future.³¹⁹ The association noted that the New South Wales public sector could use the federal templates for in-house consultancy to address similar competence and capability issues.³²⁰
- 3.50** Mr Bill Browne, Director, Democracy and Accountability Program, Australia Institute, also commented on reforms at the federal level that aimed to create an 'internal government consulting service', noting that that model could be 'worth looking at'.³²¹
- 3.51** Others encouraged governments to establish public labs and in-house consultancies.³²² Dr Twyford, acknowledged that this approach had been criticised on the grounds that government salaries in the consultancy group could 'never match' the salaries of private sector consultants.³²³ Nonetheless, Dr Twyford still viewed it as a worthwhile strategy, '... if you get really good people in, you will still save money because you're not paying all this money for that shadow public service'.³²⁴
- 3.52** The committee also heard how research institutions could be engaged as an alternative to the use of external consultants or building of an in-house government consultancy. Mr Andy Asquith, Research Officer, Public Service Association of NSW, proposed that universities and researchers be the 'first port of call' when specialist expertise is needed.³²⁵ Dr Williams suggested that Australian academia could be 'harnessed to provide genuinely independent expertise'.³²⁶

Committee comment

- 3.53** The committee recognises that while there are legitimate uses for consultants by government agencies, the current use and management of consultants has 'hollowed out' some areas of the public sector in terms of its capacity as well as capability.
- 3.54** As discussed in Chapter 2, the committee is concerned that an over-reliance on the use of consultants over many years has essentially created a 'shadow public service'. We are alarmed that consultants have in some cases been used to complete core government work, or to prepare meeting agendas and minutes. It is essential that agencies do not default to the use of consultants

³¹⁹ Submission 20, Public Service Association of NSW, p 9.

³²⁰ Evidence, Mr Little, 16 August 2023, p 57.

³²¹ Evidence, Mr Browne, 28 July 2023, p 24.

³²² Submission 5, Emeritus Professor James Guthrie, AM, FCPA, Professor John Dumay, CA, Professor Jane Andrew, CPA and Dr Erin Twyford, CA, p 7.

³²³ Evidence, Dr Twyford, 28 July 2023, p 6.

³²⁴ Evidence, Dr Twyford, 28 July 2023, p 6.

³²⁵ Evidence, Mr Andy Asquith, Research Officer, Public Service Association of NSW, 16 August 2023, p 61.

³²⁶ Evidence, Dr Williams, 8 August 2023, p 3.

but instead ensure that the use of consultants is strategic and for the purposes of obtaining necessary expertise.

Finding 4

In part, the overuse of consultants by departments and agencies is due to a lack of senior managerial oversight in the public sector. In-house managers obviously know their agencies better than anyone else but in pursuing strategic change, restructuring and difficult HR matters they often find it easier to bring in outside consultants to recommend changes that will upset their public sector workers with redundancies, staff reallocations and new resourcing priorities, rather than confront these issues themselves.

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- 3.55** The committee notes examples where government agencies have allegedly engaged in 'consultant shopping', in order to be provided with pre-determined outcomes. We are disappointed by the damage this has on the perception of the public service and government as a whole. It is of the utmost importance that the NSW Government receives fair and frank advice that is impartial and objective. The practice of consultant shopping is unacceptable and every effort must be made to stamp it out.
- 3.56** The public sector needs to be able to attract, recruit and retain talent. Specifically, the committee notes the pressing need for the public sector to retain its workforce who are mid-career. The committee acknowledges that the public sector is not always competitive in the labour market in terms of the salaries it is able to offer. While there are other factors that attract people to work in the public service, we are concerned that some, especially those in the middle of their careers, may be tempted to move to consulting firms where they can earn two to three times as much. We acknowledge that this can be a particular issue in some industries, such as those with digital expertise.
- 3.57** The committee observes that higher, more competitive pay and salaries for public servants with specialised and technical skills may assist in this regard and lessen the dependence on consultants.

Finding 5

The overuse and reliance on consultants and contractors by the NSW Government has occurred alongside a reduction in public sector skill and capacity. For the government to be effective in reducing its spend on consultants and contractors, it will need to simultaneously work to bolster the public sector.

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- 3.58** In order to prevent a continuing 'revolving door' between senior public servants and consulting firms, the committee recommends that mandated periods be introduced that restrict the immediate employment of a senior public servant by a consulting firm following their exit from the public sector. To this end, we recommend that the NSW Government prohibit senior public servants from working for relevant private sector clients and consultants or their representative bodies within six months of leaving the public sector.

Recommendation 10

That the NSW Government prohibit senior public servants from working for relevant private sector clients and consultants or their representative bodies within six months of leaving the public sector.

- 3.59** Unless there is change, the reliance on consultants is likely to increase and be further reinforced. It is critical that the work of the public sector is valued, and its capability and capacity rebuilt so as to counter any further erosion. In turn, this will empower government agencies to properly scrutinise and assess all work completed by consultants, and avoid any sense of deference to them.
- 3.60** It is our recommendation that the NSW Government require NSW Procurement, in consultation with the NSW Public Service Commission, to report annually on the number of contractors, consultants, and other labour hire workers, as compared to the number of public sector employees within each government agency.
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Recommendation 11

That the NSW Government require NSW Procurement, in consultation with the NSW Public Service Commission, to report annually on the number of contractors, consultants, and other labour hire workers, as compared to the number of public sector employees within each government agency.

- 3.61** It is vital that if consultants are engaged for projects, that the process embeds requirements for knowledge and skills transfer to the agency. The committee is encouraged by such examples at SIRA and Service NSW and urges other government agencies to adopt a similar approach. Consultants who share their knowledge, skills and tools enable agencies to conduct that work in future, reducing the dependence of the public sector on consultants. The committee notes that knowledge sharing is not always a component of engagements, and should be a requirement. We accordingly recommend that the NSW Government ensure contracts with consulting firms, where appropriate, include a requirement that the government department or agency be trained in relevant knowledge, skills or expertise needed to complete the project, as part of the engagement.
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Finding 6

The work of Service NSW is a good model for handling consultants through short-term contracts in disciplines where it lacks expertise (such as advanced IT); it promptly replicates this expertise internally (learning from the consultancy service) and then moves on. Service NSW has been an effective model for this approach.

Recommendation 12

That the NSW Government ensure contracts with consulting firms, where appropriate, include a requirement that the government department or agency be trained in relevant knowledge, skills or expertise needed to complete the project, as part of the engagement.

- 3.62** In addition, the committee is of the view that the skills already within the public service could be better used by the public sector as a whole. The committee is concerned that the devolved nature of government agencies has prevented an awareness of what skills may exist across the public service, and in some cases, there may a reluctance towards sharing this knowledge and skill set. Accordingly, the committee recommends that the NSW Government conduct a skills audit across all government departments and agencies in order to identify skills that could be used in other areas of the public sector.
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Recommendation 13

That the NSW Government conduct a skills audit of the public sector to determine what skills could be shared between government department and agencies.

- 3.63** The committee had the benefit of learning about some of alternative approaches to the use of consultants from the private sector. While the committee accepts that there are mixed views as to the value of a specialist consulting arm within the NSW Government, we believe that this is an option worthy of further consideration, and we recommend that the government investigate the feasibility of developing an in-house speciality consulting team, similar to that of the Australian Government.
- 3.64** In the interim, the committee believes that there is value in the NSW Government allocating responsibility to a department, such as NSW Treasury, to aid in the preparation of business cases across the public sector. This will minimise the need to engage consultants for this purpose.
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Recommendation 14

That the NSW Government investigate the feasibility of developing an in-house speciality consulting team, similar to that of the Australian Government.

Recommendation 15

That the NSW Government, as an interim measure prior to the establishing of an in-house specialty consulting team, allocate responsibility to an appropriate department for the preparation of business cases across the public sector.

Chapter 4 Conflicts of interest

This chapter examines how the NSW Government and consulting services manage real and perceived conflicts of interest in their engagements. It examines strategies that consultancies and the government use to manage these conflicts, including probity walls. Finally, it considers alternative approaches designed to avoid conflicts of interest, such as consulting businesses that only accept government engagements and do not complete work for private sector clients.

Potential conflicts of interest

- 4.1** The Independent Commission Against Corruption (ICAC) defined a conflict of interest as '... circumstances in which someone's personal interests may conflict with their public duty'.³²⁷ Ms Giselle Tocher, Acting Executive Director, Corruption Prevention Division, NSW Independent Commission Against Corruption, elucidated on this definition, advising that a conflict of interest may exist when a reasonable person perceives that personal interests may be favoured over a person's public duties or, in the case of a consultant, obligations to a government client.³²⁸
- 4.2** ICAC applies four elements to test whether a conflict of interest exists:
- does the official have a personal interest?
 - does the official have a public duty?
 - is there a connection between the personal interest and the public duty?
 - could a reasonable person perceive that the personal interest might be favoured?³²⁹
- 4.3** Further, a conflict of interest does not inherently constitute corrupt conduct. However, corrupt conduct can arise when a conflict of interest is concealed, understated, mismanaged or abused.³³⁰
- 4.4** ICAC has noted that all employees, consultants and contractors should be informed of their obligations in connection with conflicts of interest and the potential consequences of breaches.³³¹ To this end, prequalified suppliers with the Performance and Management Services Scheme (P&MS Scheme) agree, as part of their engagement, to certain rules and terms and conditions in relation to conflicts of interest.³³² Every engagement under the P&MS Scheme must adhere to the *Supplier Code of Conduct*, which includes provisions on disclosing conflicts of

³²⁷ Independent Commission Against Corruption NSW, *Managing conflicts of interest in the NSW public sector*, April 2019, p 4.

³²⁸ Evidence, Ms Giselle Tocher, Acting Executive Director, Corruption Prevention Division, NSW Independent Commission Against Corruption, 30 June 2023, p 2.

³²⁹ Independent Commission Against Corruption NSW, *Managing conflicts of interest in the NSW public sector*, April 2019, p 4.

³³⁰ Independent Commission Against Corruption NSW, *Managing Conflicts of Interest in the NSW Public Sector*, April 2019, p 7.

³³¹ Independent Commission Against Corruption NSW, *Managing Conflicts of Interest in the NSW Public Sector*, April 2019, p 27.

³³² Submission 19, NSW Government, p 23.

interest as well as protecting confidential information.³³³ In its submission, the NSW Government advised of how this system operates:

Under the standard form of agreement, suppliers are obligated to confirm the absence of any existing or potential conflict of interest in performing their services under the engagement. If a conflict of interest arises or is anticipated, suppliers must immediately notify the agency in writing. The agency can then either approve the continuation of service under reasonable conditions for conflict management or terminate the engagement.³³⁴

- 4.5** Certain professional associations have specific conflicts of interest standards. For example, section 310 of the *Accounting Professional and Ethical Standards Code of Ethics for Professional Accountants* (APES110) sets out the requirements for identifying circumstances that may create a conflict of interest.³³⁵ However, while pronouncements by the Accounting Professional and Ethical Standards Board apply to Chartered Accountants and Australia New Zealand, CPA Australia, and the Institute of Public Accountants,³³⁶ a large number of consultants are not accountants and may not be a member of a professional association.
- 4.6** The major consultancies told the committee about their conflict of interest policies and procedures. For the most part, each discussed their responsibilities under APES 110 and detailed how their various codes of practices, values and specific conflict of interest policies seek to identify and manage conflicts of interests.³³⁷
- 4.7** For example, Deloitte outlined its values, code of conduct and conflict of interest procedures in its submission.³³⁸ During evidence to the committee, Deloitte explained in practice these procedures ensure that prior to every engagement it assesses whether it has any real or perceived conflicts of interests.³³⁹ Ms Sneza Pelusi, Chief Risk Officer, Partner, Deloitte Australia, noted that should a potential conflict of interest be identified, the consultancy considers whether safeguards can be put in place to manage this risk. Ms Pelusi concluded: 'If we make an assessment that we actually don't feel that we can have appropriate safeguards in place that we feel comfortable with, we will just decline the engagement'.³⁴⁰
- 4.8** ICAC emphasised the importance of engaging consultants under the NSW Government's terms and conditions rather than those of the consulting service. Ms Tocher advised: 'Any conflict of interest must be resolved in favour of the public interest'.³⁴¹

³³³ Submission 19, NSW Government, p 24.

³³⁴ Submission 19, NSW Government, p 24.

³³⁵ Submission 12, Accounting Professional and Ethical Standards Board, p 4.

³³⁶ Submission 12, Accounting Professional and Ethical Standards Board, p 1.

³³⁷ See, Submission 8, EY, p 13; Evidence, Mrs Leigh Walker, Oceania Risk and Independence Leader, EY Oceania, 5 February 2024, p 28; Submission 6, KPMG, pp 9-10; Evidence, Mr Nathan Schlesinger, National Health Industry Leader, PwC Australia, 26 June 2023, p 27.

³³⁸ Submission 18, Deloitte, p 4.

³³⁹ Evidence, Ms Sneza Pelusi, Chief Risk Officer, Partner, Deloitte Australia, 16 August 2023, p 52.

³⁴⁰ Evidence, Ms Pelusi, 16 August 2023, p 52.

³⁴¹ Evidence, Ms Tocher, 30 June 2023, p 2.

Areas where conflicts of interest tend to arise

- 4.9 There are a number of potential conflicts of interest when consultants work with government agencies. Table 3 lists some of the conflicts of interest that may arise when consulting firms complete work for government departments or agencies as well as for the private sector.

Table 3 Conflicts of interest that may arise for consulting services who have both government and private sector clients

providing expert advice to a client that may benefit the interests of another client	providing advice to a government agency on a procurement project as well as to a client bidding on the project
obligations to a government client versus the commercial interest of the firm	a personal financial interest in the outcome of a NSW Government contracting process or transaction
the use of confidential information to obtain new clients	private consulting firms being major donors to political parties
the sharing of intelligence about a regulator's attitude to prosecutions that is not publicly known	advising multiple parties who may have competing interests in relation to a particular matter
advising governments on taxation while also advising private sector clients on ways to minimise taxation	the proposed provision of non-audit services to external audit clients
being reluctant to ask questions or properly scrutinise client records for fear of jeopardising a lucrative financial relationship	either having a family member work for a NSW government agency or a consultant having previously worked for that agency and having access to information that could be used for the benefit of another client
the size and power of global firms may result in them being 'too big to fail' and 'too concentrated to indict', creating 'a strange form of legal immunity'	when other clients have an interest in the privatisation of public services
when a consulting service provides advice to the government on a funding program as well as to a client receiving funding from the program	

Source: Submission 2, Professor Fran Baum and Dr Julia Anaf, p 2; Submission 8, EY, p 14; Submission 6, KPMG, p 10; Evidence, Ms Giselle Tocher, Acting Executive Director, Corruption Prevention Division, NSW Independent Commission Against Corruption, 30 June 2023, p 2.

- 4.10 As discussed in Chapter 1, ICAC has provided guidance to government agencies about the most effective way to obtain and use independent advice to help minimise the potential for conflicts of interest. Specifically, ICAC warned of 'deliberately manipulated' advice, where public officials

'hide' behind advice provided by seemingly independent sources to support a particular course of action.³⁴²

4.11 ICAC also noted that most independent experts have at least some interest in both 'keeping their paying clients happy', as well as being considered for future consulting engagements.³⁴³ ICAC identified this as creating tension for the independent expert, who is torn between providing honest and impartial advice and telling the client what they want to hear.³⁴⁴ These situations can, in some 'rare cases', spill over into unethical conduct or corruption. This can include:

- shopping for advisers who are unqualified or will agree to give biased advice
- advisers who are more focused on pleasing clients than providing good advice
- advisers with undisclosed conflicts of interest.³⁴⁵

4.12 ICAC has also provided extensive advice on how to engage independent advice and what to do if disagreeing with independent advice.³⁴⁶

4.13 However, the conflict of interest may not always fall within the consulting organisation. In some cases, the potential conflict may be for the government department or agency. Ms Tocher highlighted how the use of an independent consultant in these situations could actually help ensure integrity.³⁴⁷

Managing conflicts of interest

4.14 During the inquiry, the committee learned of various approaches adopted by the NSW Government and consultancies to manage conflicts of interest and minimise the risks that would otherwise be present. These included having conflicts of interest management plans and using measures such as probity walls and information barriers to ensure the confidentiality of government information.

³⁴² Independent Commission Against Corruption NSW, *Obtaining independent advice: dos and don'ts*, December 2021, p 1.

³⁴³ Independent Commission Against Corruption NSW, *Obtaining independent advice: dos and don'ts*, December 2021, p 1.

³⁴⁴ Independent Commission Against Corruption NSW, *Obtaining independent advice: dos and don'ts*, December 2021, p 1. Also see, Evidence, Ms Tocher, 30 June 2023, p 2.

³⁴⁵ Independent Commission Against Corruption NSW, *Obtaining independent advice: dos and don'ts*, December 2021, pp 1-2.

³⁴⁶ Independent Commission Against Corruption NSW, *Obtaining independent advice: dos and don'ts*, December 2021, pp 4 – 6.

³⁴⁷ Evidence, Ms Tocher, 30 June 2023, p 2.

4.15 In evidence to the committee, Ms Tocher advised that once a conflict of interest is identified, it is best practice for the NSW Government and consultancies to have a conflict of interest management plan that is regularly reviewed:

It's best practice, when someone declares a conflict, to have a conflict-of-interest management plan. That will work out the mechanisms you're using to manage the conflict. It may require recusal. Or, if it's considered low risk, it may not. It may be that the person's just not involved in certain aspects of that work. That should be in writing and signed by all the parties involved and regularly reviewed as well. That's not just the end of the story. You come back to that document, and you review that those measures have been put in place.³⁴⁸

4.16 As discussed earlier in the chapter, a number of firms have specific policies for managing conflicts of interest. The committee learned government agencies have taken similar actions. For example, Sydney Metro has a dedicated probity team responsible for managing conflicts of interest, providing advice as well as independent external probity advisors. The team issued advice in response to 137 requests between April 2022 and October 2023.³⁴⁹

4.17 However, the committee heard that the tensions arise when conflicts of interest are not readily apparent. Ms Tocher identified some of the complexities of identifying a conflict of interest, such as recognising commercial obligations:

At first blush, it [conflict of interest] appears like quite a straightforward concept, but we do find people often struggle with it. It's particularly difficult for suppliers when you start getting into the area of competing obligations or incompatible obligations, because they may just see a conflict of interest as a personal interest where they personally profit, and not look wider at what the competing commercial obligations are at play here. I think it's very important that any requirements explain and define a conflict of interest, and broaden out the concept for suppliers and consultants to include competing obligations. In terms of a framework, I think it is really important to look at what is the confidential information involved, and to actually itemise that.³⁵⁰

4.18 In other situations, conclusions may differ as to whether or not there is an actual or perceived conflict of interest. This was particularly evident during discussions about whether there was an inherent conflict of interest in firms providing consulting as well as auditing services. For the most part, consultancies argued that their risk assessment processes could adequately identify and manage potential conflicts of interests.³⁵¹ Alternatively, other stakeholders suggested that there was an inherent tension in these engagements that cannot be overcome.

4.19 The case study below illustrates how different parties may form contrasting views as to whether a situation involves a conflict of interest.

³⁴⁸ Evidence, Ms Tocher, 30 June 2023, p 5.

³⁴⁹ Answers to questions on notice and supplementary questions, Sydney Metro, received 4 October 2023, p 9.

³⁵⁰ Evidence, Ms Tocher, 30 June 2023, p 3.

³⁵¹ See, for example, Evidence, Ms Pelusi, 16 August 2023, p 52.

Case study – EY and the *Future of Gas Statement*³⁵²

The consulting firm, EY, helped to prepare the *Future of Gas Statement* ('the Statement') for the then NSW Government. The Statement, which was released in July 2021, set out the government's approach to future gas exploration, production and supply. It included comments about the Narrabri Gas Project – a proposal by Santos, a global energy company, to develop a gas field at Narrabri. EY did not disclose that it was conducting assurance work for Santos.

EY did not believe this situation presented a conflict of interest as it had only provided economic modelling and had not drafted the Statement or its recommendations.

On the other hand, Mr Rod Campbell, Research Director, Australia Institute, asserted that working on environment and energy matters for the NSW Government and numerous coal projects, including Santos, caused EY to have a 'clear' conflict of interest.

The Minister for Natural Resources, the Hon Courtney Houssos MLC, also expressed concern about the lack of disclosure by EY, stating that the 'revelation of another potential undisclosed conflict of interest under the former government adds to a systematic pattern of behaviour which only serves to undermine confidence in the development of public policy'. The Minister added: 'The government will also consider whether existing rules around disclosures of conflicts of interest are sufficient, as part of its broader consideration of the rules around the use of consultants'.

4.20 Dr Julia Anaf, Research Fellow, University of Adelaide, discussed the difficulties in catering to both public and private interests:

You cannot really be working in the interests of both the public interest, the public good, and giving the same commitment to protecting the vested interests and the private interests of private corporations and other entities like that. It would be very difficult to straddle both of those fields. But walking both sides of the street is also when you have companies providing, say, both auditing services and then also advisory services or supportive or facilitative services. Those are two very different areas where conflicts arise there, of course, as well.³⁵³

4.21 In part, it was suggested to the committee that these types of conflicts of interest persist due to the difference in the standards of behaviour expected of public servants compared to those in the private sector. Mr Bill Browne, Director, Democracy and Accountability Program, Australia Institute, explained:

We see in theory the problem with relying on these screens, and that's partly to do with the probity that we expect from government, which to some extent is a higher standard than that expected of, say, the corporate sector. The public is quite entitled to expect that conflict of interest is properly managed. We expect from public servants a higher standard of behaviour than that we expect from private consultants. That reflects the

³⁵² Evidence, Mrs Walker, 5 February 2024, p 18; Evidence, Mr Rod Campbell, Research Director, Australia Institute, 28 July 2023, p 22; Henry Belot, 'Consulting firm EY worked for gas giant Santos while advising NSW on gas policy', *The Guardian*, 9 August 2023, <https://www.theguardian.com/australia-news/2023/aug/09/ey-worked-for-santos-while-assisting-nsw-policy-that-greenlit-gas-giants-narrabri-project>.

³⁵³ Evidence, Dr Julia Anaf, Research Fellow, Stretton Health Equity, Stretton Institute, University of Adelaide, 9 August 2023, p 32.

importance of the work that government does and the trust that has been placed into it by the public. But there's also the practical side, which is that we see evidence of these walls, these screens, failing to hold up.³⁵⁴

- 4.22** Mr Browne elaborated how the issue is more than just the separation of the audit and consulting functions:

While there is claimed to be a wall between audit functions and other parts of large consulting firms, there is no wall within the economic modelling and economic consulting parts of these businesses, so we see, time and again, the economic arm of a consultancy consulting for coal companies and then the very same people consulting to the New South Wales planning department.³⁵⁵

- 4.23** Various inquiry participants, including Professor James Guthrie, Emeritus Professor, Macquarie University and Fellow Certified Practicing Accountant (private capacity), argued that the complete separation of auditing from consulting was the only way to remove the inherent conflict of interest.³⁵⁶

Probity walls and other information barriers

- 4.24** Ensuring information gained through government work is treated as confidential is frequently key to managing conflicts of interest. The committee learned of various practices used by consultancies to safeguard information and prevent it being shared with other members of the organisation or used for the benefit of clients. A common mechanism is the use of probity walls and other ring-fencing arrangements to contain information.

- 4.25** The committee heard how consulting projects can involve consultants being physically located within a government department or agency. Mr Alfa D'Amato, Deputy Secretary and Chief Financial Officer, Financial Services and Asset Management Division, NSW Health, explained how NSW Health ensures such consultants do not misuse government information:

First of all, if they come and sit with us normally they are to be onboarded using our system and therefore they're issued a StaffLink number from us, which means they also need to comply with all the rules that we have to comply with as employees. That means they also need to do the mandatory training, which I also admit sometimes is rather expensive because we have to pay them while they do this training, which also include all types of training, including privacy, confidentiality and use of data. They have to be complying with all our standards, including confidentiality.³⁵⁷

³⁵⁴ Evidence, Mr Bill Browne, Director, Democracy and Accountability Program, Australia Institute, 28 July 2023, p 22.

³⁵⁵ Evidence, Mr Campbell, 28 July 2023, p 23.

³⁵⁶ Evidence, Emeritus Professor James Guthrie, Emeritus Professor, Macquarie University and Fellow Certified Practicing Accountant (private capacity), 28 July 2023, p 2; Evidence, Dr Catherine Williams, Research Director, Centre For Public Integrity, 8 August 2023, p 2.

³⁵⁷ Evidence, Mr Alfa D'Amato, Deputy Secretary and Chief Financial Officer, Financial Services and Asset Management Division, NSW Health, 15 June 2023, p 31.

4.26 Mr D'Amato went on to explain that sometimes additional measures are necessary to manage risk:

I think the most important part that I want to also remind is that when we know that there is a potential risk—and in my experience, when I engage firms to do analysis on data— we also at times put clauses that they have to destroy the data and provide the evidence that the data has been destroyed.³⁵⁸

4.27 These sorts of risks would also need to be managed in relation to contractors to ensure that information is appropriately contained. To this end, Mr D'Amato informed the committee that anyone with access to the NSW Health system has to complete the mandatory training so as to mitigate risk.³⁵⁹

4.28 Ms Sneza Pelusi, Chief Risk Officer, Deloitte Australia, addressed some of the concerns around consulting firms working for both the NSW Government and private sector clients, and the perception that information gained from government work could be used to leverage private sector clients:

From a confidentiality perspective, I mean that is a base obligation for all of our practitioners across the organisation to adhere to confidentiality on what we call a need-to-know basis around that engagement, and it is obviously kept to the details of that engagement. In cases where we make an assessment that it is a higher risk type engagement, then there is even greater protocols that we enact through a confidential information management plan and that's just our terminology for even tighter safeguards around data capture, storage and protocols around it.³⁶⁰

4.29 EY highlighted how APES 110 Code of Ethics identifies the separation of engagement teams as a core safeguard for managing a conflict of interest and complying with confidentiality requirements. This requires the use of information barriers to prevent the exchange of confidential and sensitive information between separate client teams.³⁶¹ As part of the team separation process, EY typically requires discussions and telephone calls about the engagement to be held in secure locations. Access to documentation is restricted with electronic information stored on a controlled access file. EY also use confidential project rooms in certain circumstances, with the engagement team performing all work from that room.³⁶²

4.30 Nonetheless, Ms Tocher advised that the existence of a probity wall is an insufficient protection and requires proper oversight to ensure it is effective:

It is about ring fencing certain information, but it's also really important that the firm or the consultancy has someone in charge who is important for policing those requirements, and it's clearly understood how it will work and how it's audited. For example, checks should really be conducted to alert certain high-risk activities, like who is downloading a lot of information that doesn't really make sense or doesn't really relate to the tasks they should be carrying out. Other measures could be making sure information can't in fact be downloaded, or requirements to destroy the confidential

³⁵⁸ Evidence, Mr D'Amato, 15 June 2023, p 31.

³⁵⁹ Evidence, Mr D'Amato, 15 June 2023, p 31.

³⁶⁰ Evidence, Ms Pelusi, 16 August 2023, p 46.

³⁶¹ Submission 8, EY, p 16.

³⁶² Submission 8, EY, p 16.

information once the consultancy is over. So it's not just about at the time, but there is the post-separation plan after the consultancy is over. Also, I think the Government needs to retain the right to audit these arrangements within a firm as well.³⁶³

- 4.31** The case study below illustrates the damage that may result when conflicts of interest are not appropriately managed and integrity walls collapse.

Case study: Transport Asset Holding Entity and KPMG³⁶⁴

The Transport Asset Holding Entity (TAHE), a statutory state owned corporation, assumed ownership of the state's rail assets in July 2020. As part of this process, KPMG conducted work for NSW Treasury around the accounting standards and treatment of the TAHE entity. However, KPMG was simultaneously engaged by Transport for NSW to complete work on the long-term operating and financial implications for TAHE. As a result, the consulting firm was completing work for two different government agencies in relation to the one project. The objectives of NSW Treasury and Transport for NSW in relation to TAHE also differed, further complicating matters.

KPMG clearly lacked a strong integrity wall separating the work it was doing for both departments. Mr Peter Perdikos, Executive Director, Commercial, Procurement and Transformation, Transport for NSW, described the fluidity of the situation, acknowledging the 'large amount of conversations through various parts of Transport with Treasury and KPMG', and that Transport for NSW had 'direct engagement with Treasury's lead KPMG partner and we had ongoing conversations with her and her team, and similarly with Treasury, around the engagement'.³⁶⁵

KPMG has since accepted that it made a number of mistakes by failing to appropriately manage the conflicts of interest that existed in relation to TAHE. The consulting service did not understand the lack of alignment between the interests of both government agencies. KPMG did not step back as required by the situation and ask the NSW Government to resolve the issues.

KPMG said it has learnt from these mistakes and now uses 'rigorous' engagement assessment and client assessment processes to manage conflicts of interest.³⁶⁶ The consultancy also has a commercial conflict resolution committee, led by the national managing partners, that assess the highest risk commercial conflicts and determine whether appropriate safeguards can be used to manage the risk or whether the engagement needs to be declined.

³⁶³ Evidence, Ms Tocher, 30 June 2023, p 3.

³⁶⁴ Evidence, Mr Peter Perdikos, Executive Director, Commercial, Procurement and Transformation, Transport for NSW, 5 September 2023, p 11; Evidence, Mr Paul Low, National Industry Leader, Infrastructure, Government and Healthcare, KPMG, 5 September 2023, pp 53 and 67; Evidence, Mr Marcus McArdle, Risk Management Partner, Audit, KPMG, 5 September 2023, p 54; Evidence, Professor Brendan Lyon, Professor of Practice, Faculty of Business and Law, University of Wollongong, 6 September 2023, pp 2 and 5; Audit Office of New South Wales, *Design and implementation of the Transport Asset Holding Entity*, 24 January 2023; Evidence, Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance, Chartered Accountants, Australia and New Zealand, 28 July 2023, pp 11-12, 14. The Public Accountability Committee undertook an extensive inquiry into the Transport Asset Holding Entity in the 57th Parliament. Further details about the issues surrounding the establishment of TAHE may be found in their report: Public Accountability Committee, NSW Legislative Council, *Transport Asset Holding Entity*, 2022.

³⁶⁵ Evidence, Mr Perdikos, 5 September 2023, p 11.

³⁶⁶ Evidence, Mr McArdle, 5 September 2023, p 54.

However, the consequences for KPMG have been rather limited other than reputational damage. KPMG was not required to pay back the amount it received for the work on TAHE. While Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance, Chartered Accountants Australia and New Zealand (CA ANZ), confirmed that the Professional Conduct Committee of CA ANZ had initiated some preliminary inquiries in relation to KPMG and TAHE in late 2021, the investigation was still underway in July 2023. However, CA ANZ was unable to publicly provide many details about the investigation. It also reiterated that its processes are in relation to members, such as the partners of KPMG, rather than the firm itself.

KPMG has continued to be engaged for government work.

On the other hand, there have been significant personal consequences for Mr Brendan Lyon, a former partner at KPMG, who exposed the potential flaws in TAHE's operating model. Mr Lyon lost his job, and at least \$2 million in costs and earnings. He also suffered substantial reputational damage for his actions.

The investigation into this matter has been limited as Mr Lyon has resigned from CA ANZ. In future, Mr Lyon could re-join to clear his name and rebuild his reputation.

- 4.32** During the inquiry, the committee heard how a perceived conflict of interest could cause as much damage as an actual conflict of interest. Some stakeholders questioned the utility of probity walls when they could not remove the perception of a conflict of interest. Ms Sarah McKenzie, Research Associate, Per Capita, explained how perceived conflicts of interest negatively impact public trust:

It may be true that you are able to put up a very good wall between your consulting with the Government about Government policy while also advising 43 of the world's biggest polluters. You might be able to do that, but at this point I think we've got to a position where it would be difficult for the public to believe that. I think we're dealing with both real conflicts of interest but also perhaps some measures to deal with perceived conflicts of interest that have been able to kind of fester.³⁶⁷

- 4.33** Similarly, Dr Catherine Williams, Research Director, Centre for Public Integrity, was firmly of the view that integrity walls do not work as they do not remove the perception of a conflict of interest:

If we take it over to the situation of consulting firms in the scenario that you have described—that they don't have a conflict of interest—the difficulty is that that fair-minded lay observer still well might reasonably apprehend that a conflict exists. That has this deleterious impact upon public trust, which then has a flow-on effect for democracy. That's the key problem here—that even if the walls function as they are supposed to, they cannot prevent there being a perception of a conflict of interest that is harmful to our society.³⁶⁸

³⁶⁷ Evidence, Ms Sarah McKenzie, Research Associate, Per Capita, 28 July 2023, p 34.

³⁶⁸ Evidence, Dr Williams, p 2.

Consultants on government boards and committees

4.34 A contentious issue among inquiry participants was whether the presence of consultants on government boards and committees presented a high-risk situation due to their access to government information and ability to influence the direction of the board. The committee learned how a number of NSW government boards or committees include consultants as members. For example, in 2023, 24 individual board and advisory roles on NSW government boards or committees were held by current partners or employees of PwC alone.³⁶⁹ In contrast, Deloitte advised that it has a strict policy that partners and employees may not sit on government boards.³⁷⁰

4.35 Mr Phil Minns, Deputy Secretary, People, Culture and Governance Division, NSW Health, explained how NSW Health manages potential conflicts of interest on local health district boards:

We train board members, we induct them. At that induction they will be reminded about the conflict of interest policy. They will be stepped through it. We expect them to be directors that are capable of playing a board role. Part of that does rely upon them as individuals, but it also relies very heavily on the Chair.³⁷¹

4.36 The Hon John Ajaka, Chair, Sydney Local Health District Board, outlined the Sydney Local Health District Board's process for recording potential conflicts of interest:

Including myself, we firstly notify any other positions that we hold. That's recorded in the register. And if there are any conflicts of interest, we notify that. And if at a board meeting a matter arises—for example, if something arises at the board meeting that I hadn't noticed or another board member hadn't noticed—then it will be disclosed at that meeting. If no new disclosures are required, or there are no changes to the disclosure, then it's simply as per the register. I myself have updated the register on at least three or four occasions in my two years. Whenever a new appointment occurs or an old appointment ceases, I notify the register, and I'm aware that the other board members do likewise.³⁷²

4.37 However, there was some disagreement among inquiry participants as to when it was sufficient for a consultant on a government board to simply disclose a conflict of interest, and when further action may be necessary. Ms Giselle Tocher of ICAC asserted that the mere disclosure of a conflict of interest was not enough:

I think you would have to declare an actual conflict of interest and recuse yourself if the board dealt with anything that could commercially advantage that firm. I also think that person shouldn't get access to information that may advantage that firm as well and should give a contractual undertaking they won't use that information as well.³⁷³

³⁶⁹ Answers to questions on notice, PwC, received 24 July 2023, p 13.

³⁷⁰ Evidence, Mr Tom Imbesi, Chairman, Partner, Deloitte Australia, 16 August 2023, p 38.

³⁷¹ Evidence, Mr Phil Minns, Deputy Secretary, People, Culture and Governance Division, NSW Health, 15 June 2023, p 30.

³⁷² Evidence, The Hon John Ajaka, Chair, Sydney Local Health District Board, 26 June 2023, p 40.

³⁷³ Evidence, Ms Tocher, 30 June 2023, p 4.

4.38 Ms Tocher argued that these sorts of obligations should be embedded within a contract, and the requirements and what is meant by a conflict of interest must be fully explained.³⁷⁴ Nonetheless, Ms Tocher was not in favour of a blanket rule, suggesting that these sorts of situations are best dealt with on a case-by-case basis. Factors that may help determine the level of risk include:

- the role of the person in the consultancy, and their seniority
- how embedded they are in the consultancy
- the nature of their decision-making on the government board, for example, consider whether they have a delegation
- whether they are involved in determining scopes of work or who is able to quote for the consultancy.³⁷⁵

South Eastern Sydney Local Health District

4.39 The board membership of South Eastern Sydney Local Health District (SESLHD) was discussed during the hearings. The committee heard that Ms Kristin Stubbins had been a member of the board for the SESLHD from 2013 to 2015 while a partner with PwC. Ms Stubbins described the actions she took when the board discussed matters regarding PwC:

When I became aware of any discussions at all, I either recused myself or stood down, as appropriate. I've already stated that. We do have a conflict management process within PwC. If there were any discussions happening, I would have been alerted to that and, similarly, made sure that that was communicated with the health district.³⁷⁶

4.40 In response to questions around her continued presence on the SESLHD board after a conflict of interest had been identified, Ms Stubbins explained:

As I recall, what happened was that I became aware in May 2015 that PwC was to be appointed to do some further significant work, at which time I said I cannot continue on the board and I will need to step down. I was in the middle of some unrelated complex work with the CFO. I transitioned that work and attended the next two meetings, I believe, and then formally stood down in August.³⁷⁷

4.41 Mr Michael Still, Chair, SESLHD, insisted that, despite what was recorded in the minutes, Ms Stubbins was not present at meetings when PwC or the possibility of work being given to PwC was discussed.³⁷⁸ He emphasised that while management reports to the board on its process, the decisions on consultancies were ultimately made by management: 'If the board was to run these processes and choose consultants then it may be that a much stricter process around potential conflicts of interest or perceived potential conflicts would have to be undertaken'.³⁷⁹

³⁷⁴ Evidence, Ms Tocher, 30 June 2023, p 4.

³⁷⁵ Evidence, Ms Tocher, 30 June 2023, p 5.

³⁷⁶ Evidence, Ms Kristin Stubbins, Acting Chief Executive, PwC Australia, 26 June 2023, p 31.

³⁷⁷ Evidence, Ms Stubbins, 26 June 2023, p 32.

³⁷⁸ Evidence, Mr Michael Still, Chair, South Eastern Sydney Local Health District Board, 26 June 2023, p 15.

³⁷⁹ Evidence, Mr Still, 26 June 2023, p 11.

Indirect benefits to consulting firms

4.42 However, some of the benefits gained by consultants when they serve on government boards or committees are less tangible and can be difficult to take into account and manage. Dr Williams noted that such positions enable consultants to build networks of influence:

The other issue is that even if people aren't appointed to a board and doing work that might potentially benefit their firm's clients, the holding of a public board position obviously leads to the ability to build up networks of influence and knowledge that might be beneficial to a firm's operations regardless. So I think it's important to be very careful about those sorts of appointments. In respect of public appointments broadly, I think it's important that there is a very robust process in place for the making of those appointments, because the risk of those appointments being perceived as jobs for mates is a real one.³⁸⁰

4.43 Another issue that emerged is how the presence of consultants on government boards can contribute towards a bias for using consultants. Dr Anaf explained how this bias may operate:

So the more private firms that come into the public sector, the more attuned to those interests become the public servants, the less skilled they are and things like that. So there is maybe an automatic bias towards whoever you see as your own, whether it is another consulting firm or another big business. So I think it's very hard to say you disclose a conflict and that's that. How is that going to really colour what you do in your work? It's one thing to say, "By the way, I must declare that I have a particular relationship with this person, but it's not going to affect the values of what I'm going to do in this work." I think it's very hard to keep that separate.³⁸¹

4.44 Ms Emma Dawson, Executive Director, Per Capita, supported having more diverse government boards to overcome this concern:

I think it's natural for anyone to prefer the systems they are familiar with and to say, "Well, I know that works and I know how it works, so therefore I can trust it." I think diversifying the kinds of experts that sit on government boards—as I said earlier and as was said by the Committee, more use of academics and more use of people that aren't beholden to any particular outcome for their salary, for example, but also recognising that expertise is earned and learned, and it's not automatic. Often consultants will say they're expert in something when they're not, and they're able to quickly learn on the job.³⁸²

4.45 To ensure transparency in all appointments to government boards and committees, Dr Williams advocated that the appointment process should be legislated, requiring:

- the position to be advertised
- the assessment process to be undertaken by an independent panel
- the Minister to appoint a person from the shortlisted candidates.³⁸³

³⁸⁰ Evidence, Dr Williams, 8 August 2023, p 5.

³⁸¹ Evidence, Dr Anaf, 9 August 2023, p 33.

³⁸² Evidence, Ms Emma Dawson, Executive Director, Per Capita, 28 July 2023, pp 33-34.

³⁸³ Evidence, Dr Williams, 8 August 2023, p 5.

Alternative approaches

- 4.46 A number of inquiry participants proposed alternative ways of avoiding or minimising potential conflicts of interest that may arise through the more traditional use of consultancies.
- 4.47 One option presented to the committee was the establishment of a consultancy that only services the public sector. Scyne Advisory is an example of this type of organisation and is described in the case study below.

Case study: Scyne Advisory³⁸⁴

Scyne Advisory was established in mid-2023 following the tax scandal involving PwC (discussed in Chapter 1). PwC subsequently decided to sell its public sector facing business to Allegro Funds, a private equity fund manager, who led the Scyne Advisory buyout transaction. As part of the transaction, PwC transferred a number of its staff who specialised in government work.

Both Allegro Funds and the leadership of Scyne Advisory agreed that a new paradigm was needed for the government consulting industry. Unlike the major consulting firms, Scyne Advisory was set up as a company registered with the Australian Securities and Investments Commission rather than operating as a partnership. Its sole focus is the public sector in order to eliminate the inherent conflicts of serving both the public and the private sector.

Scyne Advisory has an ASX level of governance and has adopted a public sector code of conduct standard. Unlike partnerships, it has an independent chair and its board of directors and chief executive officer are not elected by partners or employees. A retired Federal Court judge, the Hon Andrew Greenwood, chairs its probity, conflicts and ethics committee.

Scyne Advisory believes that it has set a new standard for public sector consulting.

- 4.48 There were varying opinions about the merits of setting up a consultancy firm that only does work for the government. Dr Williams questioned the benefit to be gained from it:

I don't understand the rationale for that idea. What I suppose our response to that would be is why is the Government not doing government-only work? Why is that work not staying within the public sector? There is a legitimate use for external expertise, but that legitimate use, we would say, is in circumstances where there is a demonstrated and acute need for capability that is properly not within the constant capability of the public service.... But, otherwise, we should be focused on building up the capability of the public service, not referring work to a government-only consulting firm.³⁸⁵

- 4.49 Another alternative that emerged throughout the inquiry was the use of academics as opposed to consultancies to provide necessary expertise when needed. Dr Williams explained how the use of academics could avoid the conflicts of interest associated with consulting firms:

It concerns me and I know many of the academics working in this area that it sometimes seems to be the case that the big consulting firms are perceived of as the fount of all knowledge and expertise, when Australia is fortunate to have a very, very well-resourced

³⁸⁴ Evidence, Mr Adrian Loader, Board member, Scyne Advisory, 5 February 2024, pp 2 and 5.

³⁸⁵ Evidence, Dr Williams, 8 August 2023, p 3.

set-up—a qualified, knowledgeable academia effectively—all these experts who could be harnessed to provide genuinely independent expertise, the sort of expertise that it wouldn't make sense for the public service to retain on an ongoing basis and that there is a legitimate need to outsource.³⁸⁶

- 4.50** The committee also heard that public registries could also be used to support transparency around how work is allocated as well as identifying where conflicts may arise. Dr Twyford suggested that consulting firms that work with government should disclose on a publicly accessible register any clients they advise that could potentially conflict with public sector work.³⁸⁷

Committee comment

- 4.51** The NSW Government's use of consultants brings with it a large number of potential conflicts of interest that must be addressed. It is of the utmost importance that any risk is minimised and resolved in the public interest. It is disappointing to reflect on the evidence presented to the committee and note that NSW government agencies and consulting services have developed a 'tick and forget' culture when it comes to the management of conflicts of interest.

Finding 7

That NSW government agencies and consulting services have developed a 'tick and forget' culture when it comes to the management of conflicts of interest.

- 4.52** The committee is greatly concerned that there appears to be few consequences for consulting firms when it is discovered that there are clear conflicts of interest. Payment is not returned, and removal from the pre-qualification scheme is rare. Indeed, consulting firms who have acted poorly continue to be engaged for new work.
- 4.53** The committee acknowledges that every engagement under the *Performance and Management Services Scheme* must comply with the *Supplier Code of Conduct*. We also recognise that some professional associations and individual consulting firms have also issued and developed their own policies and processes to address conflicts of interest. Nonetheless, the committee is concerned that in many instances the public is being asked to trust that consulting services are doing the right thing. Further, we are not certain that these provisions are sufficiently robust, and are of the view that some of the less obvious conflicts of interest and benefits associated with an engagement are not always identified and addressed.
- 4.54** The committee firmly believes that the governance of contracts between consultancies and the government should be more stringent than that of contracts between consultancies and their private sector clients, given the importance of transparency and accountability to maintaining the public's trust in democratic institutions. Accordingly, the committee recommends that the NSW Government specifically embed the conflict of interest provisions of its *Supplier Code of Conduct* into each contract, and ensure that the parties of each engagement, whether contractor

³⁸⁶ Evidence, Dr Williams, 8 August 2023, p 3.

³⁸⁷ Evidence, Dr Erin Twyford, Senior Lecturer, University of Wollongong, and Certified Accountant (private capacity), 28 July 2023, p 2.

or consultant, are thoroughly informed as to the expectations surrounding the identification and management of conflicts of interest, both potential and perceived. Further, it is important that the provisions concerning the management of conflicts of interest are actively enforced.

- 4.55** In addition, it is clear to the committee that whether there is a conflict of interest should be determined by the NSW Government and not by the consultancies. The committee accordingly recommends that the government require a far more expansive view of what could constitute a potential conflict of interest, with clear guidance on the types of relationships that could constitute a conflict of interest, and that consultants or contractors provide a list of possible conflicts of interest in relation to each engagement. The NSW Government is to specify the penalties for breach of any conditions in relation to conflicts of interest, including the return of payment received.

Recommendation 16

That the NSW Government:

- specifically embed the conflict of interest provisions of its *Supplier Code of Conduct* into each contract
 - ensure that the parties of each engagement are thoroughly informed as to the expectations surrounding the identification and management of conflicts of interest, both potential and perceived,
 - ensure the provisions concerning the management of any conflicts of interest are actively enforced.
-

Recommendation 17

That the NSW Government:

- have a far more expansive view of what could constitute a potential conflict of interest, with clear guidance on the types of relationships that could constitute a conflict of interest
 - require all consultants or contractors to provide a list of potential conflicts of interest arising from any prospective engagement
 - determine whether there is a conflict of interest, not leave this to the consultancies themselves to determine
 - specify the penalties to apply for breach of any conditions of the engagement, including the possible return of payment received.
-

- 4.56** It is clear to the committee that it is not appropriate for a consulting firm to complete work in areas where it also acts as an auditor or has an ongoing client area. While there are already measures in place to discourage this, the committee believes a stronger stance is necessary, and recommends that the NSW Government act accordingly. We therefore recommend that the Procurement Board amend the *Performance and Management Services Scheme* and other procurement policies and frameworks to prohibit consulting services from providing consulting work to government in spheres in which it also acts as an auditor, has an ongoing client in that area, or

has worked in the previous 12 months, in any capacity, for a private sector client that could be affected by the results of the work being undertaken for the government.

Recommendation 18

That the Procurement Board amend the *Performance and Management Services Scheme* and other procurement policies and frameworks to prohibit consulting services from providing consulting work to government in spheres in which it also:

- acts as an auditor
 - has an ongoing client in that area, or
 - has worked in the previous 12 months, in any capacity, for a private sector client that could be affected by the results of the work being undertaken for the government.
-

- 4.57** The committee is particularly concerned that some stakeholders did not appear to fully appreciate how the perception of a conflict of interest can be just as damaging, especially in terms of public trust, a crucial aspect of work in the public sector. We recommend that the NSW Government ensure the rules governing conflicts of interest closely follow the guidelines provided by ICAC regarding the perception of a conflict of interest, and that consultants who do not present a conflict of interest be considered as a preferred supplier.
-

Recommendation 19

That the NSW Government ensure the rules governing conflicts of interest closely follow the guidelines provided by the NSW Independent Commission Against Corruption regarding the perception of a conflict of interest, and that consultants who do not present a conflict of interest be preferred.

- 4.58** The committee is alarmed by the significant presence of current and immediate past consultants on government boards and committees, especially those of local health districts. We acknowledge that a breadth of experience and expertise is of benefit to the purposes of a board, and that there are some measures in place to deal with conflicts of interest. Nonetheless, we are of the view that these measures can fail to recognise some of the more intangible benefits gained by those consultancies with representation on such boards.
- 4.59** The committee strongly agrees with the suggestion of the Centre for Public Integrity that a fully transparent appointment process is needed in New South Wales. In addition, it is clear that it is inappropriate for those who are currently consultants or who have a financial interest in a consulting firm to serve on public sector boards. We therefore recommend that the NSW Government ensure consultants are not appointed, and that they can only serve as observers or mentors with full disclosure and following ministerial approval.
-

Recommendation 20

That the NSW Government ensure current consultants and those with a continuing financial interest in a consulting firm:

- are deemed ineligible for appointment to a public sector board
 - can only act as observers or mentors on public sector boards, or as advisors to senior executives within agencies, only with ministerial approval and full disclosure in relevant annual reports.
-

4.60 The committee accepts that there is a place for probity walls and other ring-fencing arrangements as part of a plan for managing conflicts of interest within government agencies and consultancies. However, it is evident that for these to be effective, they must be regularly reviewed and enforced to ensure they remain appropriate and prevent any potential misuse of confidential information.

4.61 The committee recognises that the structure of Scyne Advisory is a marked improvement on those of the major consulting firms. While we appreciate its commitment to embedding higher standards and expectations, as well as the greater independence of its board, we are not fully convinced of the benefit to be gained from a consultancy that solely completes work for the public sector. We remain convinced that the ideal is to build this expertise within the public service itself.

4.62 Further, the need to set up a business that only does government work strongly suggests that an inherent conflict of interest remains in those consulting firms who continue to complete work for both public and private sector clients.

4.63 Nonetheless, the committee is pleased that alternative options are being considered. However, we would suggest that the NSW Government give consideration to the gains that could be had by embracing greater use of academic expertise as appropriate.

Chapter 5 Monitoring and enforcement

This chapter provides an overview of various enforcement and monitoring mechanisms that are used to ensure consultants and the NSW Government behave in an ethical manner. It discusses some of the limitations of the present approach and identifies areas in which it could be strengthened or reimaged.

Current monitoring and enforcement mechanisms

- 5.1** A number of mechanisms are used to ensure that consultants behave in an ethical way. These include structures built into the procurement process itself, such as confidentiality requirements as well as ethical standards encompassed in the *Supplier Code of Conduct*. In addition, certain consultants are subject to the standards set by the Accounting Professional and Ethical Standards Board (APESB). Many consultants, notably those within the accounting profession, operate within a co-regulatory environment overseen by the APESB, together with the three professional accounting bodies – Chartered Accountants Australia and New Zealand (CA ANZ), CPA Australia and the Institute of Public Accountants – as well as the Australian Securities and Investments Commission (ASIC) and the Australian Taxation Office (ATO). However, the framework that applies to consultants is generally fragmented, with some not being subject to any overarching supervisory body at all.
- 5.2** The Audit Office of New South Wales ('the Audit Office') conducts audits to assist with holding the NSW Government accountable for its use of public resources. The Auditor-General is empowered to consider whether public resources have been wasted and if probity or financial prudence has been lacking in terms of the management of public resources.³⁸⁸ As noted in Chapter 1, the Audit Office has conducted various financial and performance audits of NSW government agencies, which have, amongst other considerations, assessed the effectiveness of their procurement and management of consultants, as well as their compliance with procurement and reporting obligations.³⁸⁹
- 5.3** The Independent Commission Against Corruption (ICAC) also plays a role in ensuring that engagements involving consulting services are conducted in an ethical manner. Any person may make a complaint to ICAC about possible corrupt conduct, which ICAC may investigate.³⁹⁰ ICAC also has a role in advising public authorities on ways in which they can eliminate corrupt conduct and promote the integrity of public administration.³⁹¹
- 5.4** Ms Giselle Tocher, Acting Executive Director, Corruption Prevention Division, ICAC, outlined how a multi-pronged approach is needed when it comes to monitoring and enforcement, highlighting the role to be played by various bodies:

I think it is important we have the Auditor-General and reports like this—those reports receive publicity. There is the ICAC—we make findings of serious corrupt conduct, so I think that is important. I think the training that the ICAC does is important. NSW Procurement and Treasury have a role, too, in ensuring their guidelines are

³⁸⁸ *Government Sector Audit Act 1983*, s 27B(5).

³⁸⁹ Submission 1, Auditor-General for NSW.

³⁹⁰ *Independent Commission Against Corruption Act 1988*, s 10.

³⁹¹ *Independent Commission Against Corruption Act 1988*, s 13(1)(h).

embedded in agencies. And agencies themselves have an important role to play too. A lot of agencies do have a governance department. They are very busy people in those departments, but they would have a role as well. I do accept that often the more difficult part is not saying what you should do, but making sure everyone does it. It's a constant challenge.³⁹²

- 5.5 As outlined in Chapter 1, despite the above measures, consulting services, including each of the Big Four, have been the subject of various ethics scandals in recent years.

Monitoring and enforcement by the NSW Government

- 5.6 During the inquiry it was evident that, amongst other issues, the devolved model of governance used for NSW Government procurement creates a complex monitoring and enforcement environment. As discussed in Chapter 1, the Procurement Board is responsible for monitoring the compliance of agencies with procurement policies and directions, and agencies have their own arrangements that reflect the requirements of the Procurement Board.³⁹³
- 5.7 As part of the monitoring undertaken by the NSW Government, agencies are required to submit annual self-attestations that confirm that they have followed procurement processes, including that suppliers have met the requirements of the *Supplier Code of Conduct*.³⁹⁴ These self-attestations must be signed by both the chief procurement officer and the secretary of the department.³⁹⁵ Ms Sonya Campbell, Chair, NSW Procurement Board, Deputy Secretary, Commercial, NSW Treasury, advised that 'the current operating environment would be for the board to trust those attestations'.³⁹⁶
- 5.8 In the first instance, a government agency should seek to resolve any disputes that arise during an engagement directly with the relevant consultant. If the issue cannot be resolved, the Performance and Management Services Scheme (P&MS Scheme) provides for a range of post-engagement reviews and allows for concerns to be raised through the Procurement Board.³⁹⁷
- 5.9 The committee heard that engagement agreements can be terminated for poor performance, breaches of confidentiality, or conflicts of interest.³⁹⁸ A lead partner or a consulting firm may

³⁹² Evidence, Ms Giselle Tocher, Acting Executive Director, Corruption Prevention Division, NSW Independent Commission Against Corruption, 30 June 2023, p 8.

³⁹³ Evidence, Ms Claudia Migotto, Assistant Auditor-General for NSW, Audit Office of New South Wales, 15 June 2023, p 6; Submission 19, NSW Government, p 18.

³⁹⁴ Submission 19, NSW Government, p 12; Evidence, Ms Sonya Campbell, Deputy Secretary, Commercial, NSW Treasury, 15 June 2023, p 40.

³⁹⁵ Evidence, Ms Sonya Campbell, Deputy Secretary, Commercial, NSW Treasury, 15 June 2023, p 35.

³⁹⁶ Evidence, Ms Sonya Campbell, Deputy Secretary, Commercial, NSW Treasury, 15 June 2023, p 40.

³⁹⁷ Evidence, Mr Peter Perdikos, Executive Director, Commercial, Procurement and Transformation, Transport for NSW, 5 September 2023, p 12; Submission 19, NSW Government, p 12.

³⁹⁸ Evidence, Ms Sonya Campbell, Chair, NSW Procurement Board, Deputy Secretary, Commercial, NSW Treasury, 8 August 2023, p 19.

also be referred to external agencies if the *Supplier Code of Conduct* has been breached.³⁹⁹ Other repercussions can include criminal enforcement and corruption inquiries.⁴⁰⁰

- 5.10** There were a number of criticisms raised about the monitoring and enforcement processes for NSW Government procurement. At times, the self-attestation process appeared lacking and without any significant consequence in the case of errors. For example, icare failed to correctly classify an item of spending as for consulting services in its 2017-18 annual report, and it remained uncorrected as at August 2023.⁴⁰¹ The committee also learned of an example at SIRA where the value of an original contract with EY was incorrectly recorded as a result of human error.⁴⁰²
- 5.11** As another example, as discussed in Chapter 4, the committee received evidence that Ms Kristin Stubbins was appointed to the South Eastern Sydney Local Health District (SESLHD) from 2013 while working for PwC. Ms Stubbins was noted in the minutes as being an apology for meetings, as opposed to having stood aside, when the prospect of work going to PwC was discussed. However, the committee was informed that there were some errors in the minutes, despite them having been signed off.⁴⁰³ NSW Health stressed that its focus was on recognising errors and seeking to improve in future, including by speaking to the new Chair of the board in the SESLHD about the required standards.⁴⁰⁴
- 5.12** The Audit Office was critical of the self-reporting nature of government agencies' compliance with procurement policies and directives, viewing it as a weakness of the system.⁴⁰⁵ Its 2018 report, *Procurement and reporting of consultancy services*, found that the Procurement Board's 'oversight of agency and supplier compliance with the Standard Commercial Framework is limited as it relies on self-reporting, and the information provided is insufficient to properly monitor compliance'.⁴⁰⁶
- 5.13** While Mr Ian Goodwin, Deputy Auditor-General for NSW, acknowledged that the Procurement Board should be monitoring things, he nonetheless emphasised the responsibility of those further down, stressing that 'you can't walk away from the responsibility of line management, who are the ones commissioning the work'.⁴⁰⁷ However, he further noted

³⁹⁹ Evidence, Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance, Chartered Accountants Australia and New Zealand, 28 July 2023, p 16.

⁴⁰⁰ Evidence, Ms Chapman, 28 July 2023, p 16.

⁴⁰¹ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 16 August 2023, p 15; Answers to questions on notice, icare, received on 12 September 2023, p 5.

⁴⁰² Evidence, Mr Adam Dent, Chief Executive, SIRA, 16 August 2023, p 29; Answers to questions on notice, SIRA, received 13 September 2023, p 1.

⁴⁰³ Evidence, Mr Michael Still, Chair, Southeastern Sydney Local Health District Board, 26 June 2023, pp 4-5.

⁴⁰⁴ Evidence, Ms Susan Pearce AM, Secretary, NSW Health, 16 August 2023, p 2.

⁴⁰⁵ Evidence, Ms Margaret Crawford, Auditor-General for NSW, Audit Office of New South Wales, 15 June 2023, p 7.

⁴⁰⁶ Submission 1, Auditor-General for NSW, p 2.

⁴⁰⁷ Evidence, Mr Ian Goodwin, Deputy Auditor-General for NSW, Audit Office of New South Wales, 15 June 2023, p 7.

'effective transparency measures where all consultancy arrangements are made available in a transparent manner ... becomes a self-check on the system'.⁴⁰⁸

- 5.14** Ms Campbell accepted that there was 'opportunity for improvement', highlighting that the Procurement Board is examining 'how to add additional assurance to that process, and those are very much live conversations'.⁴⁰⁹ She further noted that while NSW Procurement had put in place a number of measures in response to Audit Office recommendations for greater transparency and data, agency co-operation was necessary:

The challenge that central agencies have is needing those other agencies to be implementing and investing in those systems and capability, to be putting those checks and balances and monitoring and compliance in place within their agencies.⁴¹⁰

- 5.15** Ms Campbell also reflected the Procurement Board faced a potential administrative burden should it be required to examine all the suppliers on the pre-qualification scheme, given that there are more than 3500 suppliers.⁴¹¹

- 5.16** Another concern to emerge during the inquiry was that large consulting firms, who have been the subject of various scandals due to unethical behaviour, remain on the pre-qualification scheme.⁴¹² In response, NSW Treasury advised that it was not aware of breaches that would warrant the removal or suspension of the Big Four professional services firms, other than the temporary suspension of PwC from providing taxation services under the P&MS Scheme in May 2023.⁴¹³ Ms Campbell outlined some of the actions that the Procurement Board had taken in relation to PwC:

... the board have met three times in the past two months, twice out of session, to discuss matters relating to PwC, and have taken actions to suspend PwC from providing taxation services to the New South Wales Government. More recently, it has issued a direction to the sector that requires all new or varied engagements with PwC to be approved by the secretary of the department. This is in addition to the requirement for attestations regarding conflicts of interest to be provided by PwC for any staff engaged in New South Wales government work.⁴¹⁴

- 5.17** Separately, there was also a concern that the available sanctions available to the Procurement Board may not be relevant for less serious situations that nonetheless require some response. Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance, CA ANZ, suggested that some alternatives may be needed:

⁴⁰⁸ Evidence, Mr Goodwin, 15 June 2023, p 7.

⁴⁰⁹ Evidence, Ms Sonya Campbell, Deputy Secretary, Commercial, NSW Treasury, 15 June 2023, p 35.

⁴¹⁰ Evidence, Ms Sonya Campbell, Deputy Secretary, Commercial, NSW Treasury, 15 June 2023, p 41.

⁴¹¹ Evidence, Ms Sonya Campbell, Chair of the NSW Procurement Board, Deputy Secretary, Commercial, NSW Treasury, 8 August 2023, p 19.

⁴¹² See, for example, Evidence, Ms Sonya Campbell, Chair of the NSW Procurement Board, Deputy Secretary, Commercial, NSW Treasury, 8 August 2023, p 19.

⁴¹³ Answers to questions on notice, NSW Treasury, received on 6 September 2023, p 4; Media release, Hon Courtney Houssos MLC, Minister for Finance, 'NSW Government announces temporary suspension of PwC from taxation-related contracts', 15 June 2023.

⁴¹⁴ Evidence, Ms Sonya Campbell, Chair, NSW Procurement Board, and Deputy Secretary, Commercial, NSW Treasury, 8 August 2023, p 16.

It may well be that in terms of an engagement, the agency may not wish to terminate the contract—may be quite comfortable or happy with the contract—but may have some reservations about the team providing services. Referral to a professional body for what may be an ethical failing is an opportunity or an option that should be available to agencies, as it is to any complainant or to any client of a firm or of a service provider.⁴¹⁵

- 5.18** In addition, concerns were raised about the structures of the Big Four. The committee heard how the *Professional Standards Act 1994* provides statutory caps which limit professional legal liability. While its purpose may be to 'balance protections of the public interest against the preservation of appropriate private rights', Professor Brendan Lyon, Professor of Practice, Faculty of Business and Law, University of Wollongong, argued that the Big Four used the *Professional Standards Act*:

... to fundamentally retard the partnership model and create a new species of protected pseudo-corporation – one which avoids the transparency, the legal duties and taxes paid by other corporations and one which provides a far stronger protection than the corporate veil granted to real corporations.⁴¹⁶

- 5.19** Professor Lyon continued: 'It is clear that the national and State interests are not served by allowing the perverted big four pseudo-corporate model to continue, and it is within the powers of this Parliament to remedy the structural problems facing the big four.'⁴¹⁷

Accounting Professional and Ethical Standards Board

- 5.20** As discussed in Chapter 1, the Accounting Professional and Ethical Standards Board (APESB) publishes ethical standards that emphasise the responsibility of the accounting profession to act in the public interest.⁴¹⁸

- 5.21** One of these standards, *APES 320 – Quality management for firms that provide non-assurance services*, specifies the 'mandatory obligations of a firm in respect of establishing and maintaining a system of quality management for non-assurance services'.⁴¹⁹ It is designed to help prevent conflicts of interest, breach of contract, and unethical behaviour.⁴²⁰ Amongst other requirements, APES 320 discusses the need for monitoring and remediation:

APES 320 addresses monitoring and remediation measures and creates a professional obligation on firms to establish a monitoring process to provide them with reasonable confidence that the system of quality management is operating effectively. The Standard also imposes requirements on firms to have processes to investigate complaints and allegations and take appropriate remedial actions when findings of the monitoring

⁴¹⁵ Evidence, Ms Chapman, 28 July 2023, p 16.

⁴¹⁶ Evidence, Professor Brendan Lyon, Professor of Practice, Faculty of Business and Law, University of Wollongong, 6 September 2023, p 4.

⁴¹⁷ Evidence, Professor Lyon, 6 September 2023, p 4.

⁴¹⁸ Evidence, Ms Nancy Milne OAM, Chairman, Accounting Professional and Ethical Standards Board, 9 August 2023, p 36.

⁴¹⁹ APESB, *APES 320 Quality management for firms that provide non-assurance services*, February 2022, p 3, https://apesb.org.au/wp-content/uploads/2022/02/APES_320_reissued_Feb_2022.pdf

⁴²⁰ Submission 13, Chartered Accountants Australia and New Zealand, p 6.

process or investigations indicate deficiencies in the firm's system of quality management.⁴²¹

5.22 Members of the three accounting professional bodies – CA ANZ, CPA Australia and the Institute of Public Accountants – must comply with APESB's code of ethics and ethical standards. However, APESB's mandate does not include the monitoring and enforcement of these standards as that is the responsibility of the member bodies, as well as ASIC and the ATO.⁴²² The regulatory environment also includes the Auditing and Assurance Standards Board and the Australian Accounting Standards Board.⁴²³ Nonetheless, APESB does seek to engage with the quality review functions of these bodies to determine whether there has been compliance with its standards and whether further enhancements are needed.⁴²⁴

5.23 Ms Nancy Milne, Chairman of APESB, described how CA ANZ, CPA, and IPA are responsible for monitoring the standards set by the APESB:

They each run a quality review system or regime whereby, as far as we know, they actually do review most of the smaller and medium practices within the accounting profession. I don't know whether it is worthwhile for the inquiry to actually look at the quality review regimes a little bit more. As ASIC has performed an annual review of the big four firms as part of their yearly audit inspection program, CA ANZ performs periodic reviews to avoid duplication of efforts.⁴²⁵

5.24 In addition, the Professional Standards Councils of Australia reviews the processes of these bodies for monitoring compliance of APESB standards by their members.⁴²⁶

Chartered Accountants Australia and New Zealand

5.25 As discussed in Chapter 1, CA ANZ is a professional accounting organisation with a membership of around 135,000 accounting, finance and affiliated professionals and around 1,400 practice entities.⁴²⁷ Its membership is comprised of:

- full members who are qualified chartered accountants
- provisional members who are enrolled in CA ANZ Graduate Diploma of Chartered Accounting
- affiliate members who are not qualified Chartered Accountants but are partners in accounting firms
- firms that opt-in to membership.⁴²⁸

⁴²¹ Submission 12, Accounting Professional and Ethical Standards Board, p 5.

⁴²² Evidence, Ms Milne, 9 August 2023, p 36.

⁴²³ Submission 12, Accounting Professional and Ethical Standards Board, p 1.

⁴²⁴ Submission 12, Accounting Professional and Ethical Standards Board, p 7.

⁴²⁵ Evidence, Ms Milne, 9 August 2023, p 41.

⁴²⁶ Submission 12, Accounting Professional and Ethical Standards Board, p 7.

⁴²⁷ Evidence, Ms Chapman, 28 July 2023, p 10.

⁴²⁸ Submission 13, Chartered Accountants Australia and New Zealand, p 1.

- 5.26** About 10 per cent of the individual members of CA ANZ work for large, multidisciplinary firms, including all partners of the big four firms.⁴²⁹ The monitoring and enforcement mechanisms available to CA ANZ are examined here due to the connection with these firms.
- 5.27** The CA ANZ by-laws bind members to the standards prescribed by the Australian Accounting Standards Board, Auditing and Assurance Standards Board, and APESB, including the APES 110 Code of Ethics.⁴³⁰ CA ANZ by-laws allow for investigation and disciplinary action in the event of a breach.⁴³¹ CA ANZ is structured to include various disciplinary bodies that are independent of its board and management, namely the Professional Conduct Committee (PCC), Disciplinary Tribunal (DT), and Appeal Tribunal (AT).⁴³² Anyone can lodge a complaint about a member, and all complaints are assessed.⁴³³
- 5.28** CA ANZ usually receives about 250 complaints each year, with most resolved within nine months.⁴³⁴ As illustrated in Figure 2, its disciplinary bodies may apply a variety of sanctions.

Figure 2 Sanctions that can be applied by CA ANZ disciplinary bodies

Sanction	PCC¹⁶	DT	AT
Reprimand	✓		
Severe Reprimand	✓		
Fine (currently capped at \$25,000 at PCC and \$50,000 at DT) ¹⁷	✓	✓	✓
Pay Costs	✓	✓	✓
Complete professional development	✓	✓	✓
Notification of the decision to a regulatory body or other professional association ¹⁸	✓	✓	✓
Engage an adviser or consultant	✓	✓	✓
Publicise the decision	✓ ¹⁹	✓ ²⁰	✓
Remove the member from the register of members		✓	✓
Suspend the member for up to 5 years		✓	✓
Cancel or suspend a member's certificate of public practice		✓	✓
Require a review of the member's practice	✓	✓	✓
Censure the member		✓	✓

Source: Submission 13, Chartered Accountants Australia and New Zealand, p 11.

- 5.29** In May 2023, CA ANZ concluded its professional conduct review. This review examined CA ANZ by-laws and the regulatory and administrative arrangements as they relate to the

⁴²⁹ Evidence, Ms Chapman, 28 July 2023, p 10.

⁴³⁰ Submission 13, Chartered Accountants Australia and New Zealand, p 3.

⁴³¹ Submission 13, Chartered Accountants Australia and New Zealand, p 1.

⁴³² Submission 13, Chartered Accountants Australia and New Zealand, p 2.

⁴³³ Evidence, Ms Chapman, 28 July 2023, p 10.

⁴³⁴ Evidence, Ms Chapman, 28 July 2023, p 12.

disciplinary framework. It found that the 'disciplinary framework align with, and in some instances exceed, applicable international and domestic standards and with peer benchmarks'.⁴³⁵

5.30 Nonetheless, CA ANZ informed the committee that following this review, it is seeking additional powers to address the misconduct of former members and firm events, with proposed amendments to be approved by members.⁴³⁶ Ms Chapman explained that, in part, this included operationalising the existing rules relating to firm events. This is to remove the current difficulties faced when partners in a firm need to notify CA ANZ that a firm event has occurred. The proposed changes would enable just one partner to make the notification on behalf of all partners. The practical difficulties of having all partners present before the Professional Conduct Committee would thus be avoided.⁴³⁷

5.31 Ms Chapman also explained that CA ANZ would seek members' approval to increase the financial penalties that may apply for firm events:

Under our current rule framework, the PCC may agree a fine of up to \$25,000 and the disciplinary tribunal up to \$50,000. That's for individual members, and the proposal that we are taking to our members for approval later in the year is to increase that to \$100,000 at the PCC level and \$250,000 at the disciplinary tribunal level in relation to firm events. This will give those bodies a significant additional sanction to deal with matters which may not be able to be attributed specifically to a partner.⁴³⁸

5.32 Additionally, the committee heard that CA ANZ would be seeking approval from members to amend its disciplinary framework.⁴³⁹

5.33 However, the self-regulatory aspect of consulting firms was criticised by some inquiry participants. Emeritus Professor James Guthrie AM, Macquarie University, and Fellow Certified Practising Accountant (private capacity), suggested that there were few consequences for consultants who do the wrong thing in relation to their work for a government agency despite the ethical rules and codes of conduct of CA ANZ, CPA, and IPA.⁴⁴⁰

5.34 Professor John Dumay, Professor of Accounting and Finance, Macquarie University and Certified Accountant (private capacity), argued that the self-regulation in a professional body's codes of ethics and practices only apply to individuals rather than firms or partnerships, with 'few enforcement measures for integrity breaches and unethical behaviour by consultants and firms'.⁴⁴¹

5.35 Professor Dumay further highlighted the reliance on whistleblowers for bringing unethical behaviour to light:

⁴³⁵ Submission 13, Chartered Accountants Australia and New Zealand, p 2.

⁴³⁶ Evidence, Ms Chapman, 28 July 2023, p 10.

⁴³⁷ Evidence, Ms Chapman, 28 July 2023, p 17.

⁴³⁸ Evidence, Ms Chapman, 28 July 2023, p 17.

⁴³⁹ Submission 13, Chartered Accountants Australia and New Zealand, p 2.

⁴⁴⁰ Evidence, Emeritus Professor James Guthrie AM, Macquarie University, and Fellow Certified Practising Accountant (private capacity), 28 July 2023, p 3.

⁴⁴¹ Evidence, Professor John Dumay, Professor of Accounting and Finance, Macquarie University and Certified Accountant (private capacity), 28 July 2023, p 2.

Professional bodies, such as the accounting and legal professional associations, take limited action against members who are partners in the big four consulting firms. Revelations about conflicts of interest and unethical behaviour are primarily due to whistleblowers and investigative journalists rather than as a result of self-regulation or self-reporting.⁴⁴²

- 5.36** Separately, Mr Gerald Jaworski, posited that consultants, particularly those working at the 'Big Four', behave inappropriately due to a lack of oversight from CA ANZ. Mr Jaworski identified a range of concerns with how the CA ANZ operates, including the organisation 'only paying lip service' to accounting standards and ethics.⁴⁴³ Mr Jaworski's concerns were 'rejected outright' by CA ANZ.⁴⁴⁴

Consulting firms' internal processes

- 5.37** In addition to the requirements of professional bodies, large consulting firms have their own internal processes to ensure certain standards of behaviour are maintained. For example, Deloitte adopts the following disciplinary approach:

- data that leaves its system into a private email is monitored
- there is a full-time ethics and conduct leader who oversees all disciplinary matters
- all matters that come to their attention are investigated and reported
- misconduct may result in such outcomes as written warnings, training, exit from the firm
- external reporting obligations are considered as part of the standard investigation process.⁴⁴⁵

- 5.38** KPMG advised that following the disclosure of the 'Tax Practitioners Board integrity matter' in 2023, it had commissioned a third-party review of its own confidentiality processes which found them to be consistent with best practice. As a result, the consulting service was confident in its ability to meet obligations under the New South Wales prequalification schemes.⁴⁴⁶ KPMG referred to what it viewed as an extensive regulatory framework to which it and other professional service firms are subject:

Contractual frameworks set by our clients define their expectations and requirements, supported by regulatory and legal obligations, professional codes and commitments to professional bodies. Further, our people are required to comply with KPMG's Code of Conduct, and the expectations of communities in which we operate.⁴⁴⁷

⁴⁴² Evidence, Professor Dumay, 28 July 2023, p 2.

⁴⁴³ Submission 22, Mr Gerald Jaworski, p 3.

⁴⁴⁴ Correspondence, Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance, Chartered Accountants Australia and New Zealand, to Chair, 21 September 2023, p 1.

⁴⁴⁵ See, Evidence, Ms Sneza Pelusi, Chief Risk Officer, Partner, Deloitte Australia, 16 August 2023, p 44 and p 47; Answers to questions on notice, Deloitte Australia, received 13 September 2023, p 2.

⁴⁴⁶ Submission 6, KPMG, p 3.

⁴⁴⁷ Submission 6, KPMG, p 8.

- 5.39** EY, noting that APES 110 Code of Ethics is embedded in its global code of conduct, similarly argued that it has numerous mechanisms in place to prevent unethical behaviour:

At EY, our comprehensive processes, procedures and enforcement of these are very effective at preventing unethical behaviour by our professionals. Our sophisticated learning and development program keeps them up to date on their responsibilities and we regularly test compliance with these. Where we identify an issue or concern, we follow up swiftly and over time to make sure this is resolved.⁴⁴⁸

- 5.40** The committee learned that 55 breaches of policies and seven breaches of EY's values had been identified in 2021-22.⁴⁴⁹ Disciplinary action taken in response included informal management conversations, facilitated conversations, verbal and/or written warnings, financial sanctions, the withholding of promotion, and/or termination of employment.⁴⁵⁰

- 5.41** PwC informed the committee that it has an 'Independence Policy' that goes beyond the regulatory requirements in its restriction of certain financial relationships between clients and partners, staff and family members. Partners and staff are also not to provide services to other clients if they have a material investment in that client. Should they or their family members have 'a pre-existing immaterial investment in that client', services may be provided 'subject to strict trading restrictions whereby there can be no trading in the securities of the client during the service period and for six months afterwards'.⁴⁵¹

Consultants without a professional code of conduct

- 5.42** It emerged from the evidence that there is nothing to prevent an individual from referring to themselves as a consultant.⁴⁵² Nor are all consultants subject to a professional body. As previously discussed, many consultants are members of accounting professional bodies. Other consultants may be subject to professional bodies and regulatory requirements such as professionals within the fields of law, engineering and property. However, a further group, such as economics consultants, are not subject to any standards.⁴⁵³ Ms Kristen Wydell, General Manager – Professional Standards, CA ANZ, highlighted the extremes that could result:

There are some consultants who have no professional association at all, and then there are others who may have many. They may be lawyers and accountants or they may be lawyers and engineers. We're finding that some have three or four regulators or oversight bodies or associations that are looking at their behaviour and others will have none.⁴⁵⁴

- 5.43** Mr Paul Low, National Industry Leader, Infrastructure, Government and Healthcare, KPMG, acknowledged that it is a complex regulatory environment: "There is no single regulatory setting

⁴⁴⁸ Submission 8, EY, p 18.

⁴⁴⁹ Submission 8, EY, p 18.

⁴⁵⁰ Submission 8, EY, p 18.

⁴⁵¹ Answers to questions on notice, PwC, received 24 July 2023, p 5.

⁴⁵² Evidence, Emeritus Professor Guthrie, 28 July 2023, p 4.

⁴⁵³ Evidence, Mr Rod Campbell, Research Director, Australia Institute, 28 July 2023, p 25.

⁴⁵⁴ Evidence, Ms Kristen Wydell, General Manager – Professional Standards, Chartered Accountants ANZ, 28 July 2023, p 16.

that oversees the consulting industry. There are multiple overlapping ones, depending on the professional status of individuals and the role of various bodies'.⁴⁵⁵

- 5.44 Those without a professional code of conduct applying to their discipline, may be without a recognised framework for managing a conflict of interest.⁴⁵⁶ Ms Chapman acknowledged the lack of independent oversight of such consultants:

Consultants to government who are not members of any professional association may have internal policies and codes of conduct, and they may also subscribe to the government supplier code of conduct, but they may not be subject to any independent oversight or enforcement of ethical behaviour.⁴⁵⁷

- 5.45 Further, Ms Chapman highlighted that the only real power of a government agency in that situation resided in the procurement framework and the *Supplier Code of Conduct*.⁴⁵⁸
- 5.46 The APESB suggested that a code of conduct for consultants, similar to APES 110, be developed to provide an appropriate framework for those consultants who are not subject to another professional body.⁴⁵⁹

Improving the monitoring and enforcement mechanisms

- 5.47 The committee received evidence about how the current enforcement mechanisms could be strengthened and improved. These suggestions ranged from actions that could be taken by the NSW Government, the establishment of a professional body with oversight of consultants, to measures that would allow for the greater scrutiny of spending involving consultants.

The role of NSW Government

- 5.48 Throughout the inquiry, the committee heard of measures that could be adopted by the NSW Government to improve the monitoring and enforcement mechanisms used to oversight consultants who perform work for government agencies.
- 5.49 A number of these measures were supported by the large consulting firms. For example, Deloitte was not opposed to appearing before future parliamentary inquiries to answer questions about work completed for the NSW Government.⁴⁶⁰ KPMG agreed with the imposition of financial penalties on those businesses that disclose confidential government information.⁴⁶¹ It also supported the introduction of an integrity charter, to supplement the current *Supplier Code of Conduct*, that would apply to those engaged by the NSW Government.⁴⁶²

⁴⁵⁵ Evidence, Mr Paul Low, National Industry Leader, Infrastructure, Government and Healthcare, KPMG, 5 September 2023, p 65.

⁴⁵⁶ Submission 12, Accounting Professional and Ethical Standards Board, p 2.

⁴⁵⁷ Evidence, Ms Chapman, 28 July 2023, p 10.

⁴⁵⁸ Evidence, Ms Chapman, 28 July 2023, p 14.

⁴⁵⁹ Submission 12, Accounting Professional and Ethical Standards Board, p 3.

⁴⁶⁰ Evidence, Mr Tom Imbesi, Chairman, Partner, Deloitte Australia, 16 August 2023, p 55.

⁴⁶¹ Submission 6, KPMG, p 5.

⁴⁶² Submission 6, KPMG, p 5.

- 5.50** Similarly, in its submission, Iceni suggested that the NSW Government establish a code of professional conduct tailored for management consultancy engagements and publicise companies who have signed in. Iceni also proposed requiring greater transparency from consultancies of their clients and projects and for government agencies to identify potential conflicts of interest.⁴⁶³
- 5.51** Another option was better equipping the public sector to manage consultant engagements. Iceni proposed that the NSW Government consider 'documenting significantly clearer definitions and examples of breach of ethical practice to resolve the broad spectrum of understanding across the public service, management consultants, the media and public'.⁴⁶⁴ It strongly recommended that a playbook be created that:
- clarifies a vision for the consultancy market
 - coordinates mission across government levels to achieve a shared vision
 - sets and monitors targets
 - increases contract entry requirements so that consultancies have to be more transparent regarding their clients and projects
 - increases oversight by expanding the scope of data collection with a focus on measuring and reporting the value delivered
 - makes capability building a requirement rather than add-on
 - disrupts the procurement lifecycle.⁴⁶⁵
- 5.52** Per Capita also provided the committee with a number of suggestions:
- introducing a debarment regime so that consultants who have committed serious misconduct or been convicted of a criminal offence can not provide services to the government
 - extending the *Government Information Public Access Act 2009*⁴⁶⁶ to the private sector in specified circumstances
 - restricting political donations from those firms providing services on behalf of the government
 - establishing an office within each government department that is 'responsible for evaluating the efficacy of contracts' and assessing whether there is compliance with guidelines.⁴⁶⁷
- 5.53** Another option is greater use of contractual requirements by agencies, so that firms or lead engagement partners must notify the agency if key personnel are the subject of a professional

⁴⁶³ Submission 9, Iceni, p 4.

⁴⁶⁴ Submission 9, Iceni, p 4.

⁴⁶⁵ Submission 9, Iceni, pp 4-5.

⁴⁶⁶ In their submission, Iceni referred to the *Freedom of Information Act 1989*, which has been replaced by the *Government Information (Public Access) Act 2009*.

⁴⁶⁷ See, Submission 10, Per Capita, p 3; Evidence, Ms Emma Dawson, Executive Director, Per Capita, 28 July 2023, p 33.

disciplinary investigation.⁴⁶⁸ This could also trigger the right to review the contract. As noted in Chapter 4, in the event that the *Supplier Code of Conduct* is breached, Ms Chapman proposed that NSW Procurement include referral to a professional association as one of the outcomes.⁴⁶⁹

- 5.54** In regard to contractual obligations, the Institute of Internal Auditors Australia argued that government agencies should require membership of a professional association as one of its selection criteria for consulting engagements.⁴⁷⁰

The role of professional associations

- 5.55** During the inquiry, it became clear that there were a number of ways in which the role of professional associations could be strengthened and adapted to improve the monitoring and enforcement of consultants. Mr Tom Imbesi, Chairman, Deloitte Australia, accepted that there could be a more efficient way of regulating firms, that 'it is appropriate to review those bodies and whether there is a more efficient and more effective regulatory oversight body that could be put in place'.⁴⁷¹ Dr Bob Walker, Emeritus Professor of Accounting, University of Sydney, posited that the ideal regulator of consulting firms would need to have a combination of monitoring powers, the ability to identify deficiencies and breaches of standards, and some mechanism for enforcement.⁴⁷²

- 5.56** One suggestion was that there should be a professional body, similar to the accounting professional bodies, that provides oversight of consultants. However, Professor Dumay was sceptical of the value of such an approach unless there was a significant change to how the current bodies operate.⁴⁷³ Professor Lyon similarly addressed some of the weaknesses of such an approach:

I think, ultimately, you should be binding all of your consultants to the public service code and you should be enforcing the contracts on them. I don't know if you need a regulator or you just need a clear statement of the standards that the public service has to comply to and enforce them onto the contractors. The problem with this is that the regulators don't feel particularly regulatory-ish and they see themselves more as a membership group in competition with another membership group for accountants. So again, if we go to incentives, I can understand why chartered accountants find it difficult to take material, fast action even where the evidence has been there for some years, unenforced.⁴⁷⁴

- 5.57** Another option is strengthening the enforcement powers as they relate to current standards. Mr Channa Wijesinghe, Chief Executive Officer, APESB, suggested that the APESB ethical standards be given legislative backing. In addition, he suggested that APESB develop a standard focused on large firm culture, developing a professional standard for management consulting.

⁴⁶⁸ Evidence, Ms Chapman, 28 July 2023, p 10.

⁴⁶⁹ Evidence, Ms Chapman, 28 July 2023, p 10.

⁴⁷⁰ Submission 25, The Institute of Internal Auditors Australia, p 2.

⁴⁷¹ Evidence, Mr Imbesi, 16 August 2023, p 44.

⁴⁷² Evidence, Dr Bob Walker, Emeritus Professor of Accounting, Business School, University of Sydney, FCA, 8 August 2023, p 9.

⁴⁷³ Evidence, Professor Dumay, 28 July 2023, p 4.

⁴⁷⁴ Evidence, Professor Lyon, 6 September 2023, p 9.

He then went on to describe mechanisms that would improve transparency as it relates to large firms:

Enhance transparency of large firms by requiring them to prepare general purpose financial reports, including remuneration disclosures, and subject them to audit, and establish an independent body to monitor all professional accountants who are not subject to statutory regulation or regulatory oversight, including taking enforcement actions where appropriate. This body should prepare an annual report of its monitoring and enforcement activities to enhance public trust.⁴⁷⁵

Enabling the proper scrutiny of consultants

5.58 A particular concern for some stakeholders was the difference between the public and private sector in terms of the scrutiny that applied to spending, especially as it related to the engaging of consulting services. Per Capita highlighted that private companies are not subject to the same oversight as government agencies, whose spending is subject to the Budget Estimates process at NSW Parliament. In addition, the contracts for their engagement often include 'commercial-in-confidence provisions that prevent the public from knowing what their money is being spent on, and whether the contracts represent value for money'.⁴⁷⁶

5.59 The Australia Institute proposed that the NSW Parliament should consider whether consulting firms who accept government work should participate in Budget Estimates. The think tank suggested that consultants should appear alongside senior public servants and ministers: "The intention is that parliamentarians would make consultants give a full explanation of their advice and involvement, and ask senior public servants and ministers to explain how that advice affected government decision making".⁴⁷⁷

5.60 Dr Erin Twyford, Senior Lecturer, University of Wollongong, and Certified Accountant (private capacity), argued that consultants who are engaged by government agencies are essentially working as public servants and should accordingly be subject to the same disciplinary measures:

You shouldn't be able to hide behind a corporate veil if you are essentially doing the work that a public servant would do in the public sector. There are already in-built disciplinary measures; it's the idea of removing that corporate veil and saying, "If the taxpayer is paying for you to come and do the work and it's supposed to be in the public interest, then any deviations of behaviour should be dealt with as if you were a public servant."⁴⁷⁸

5.61 Another option for ensuring the thorough scrutiny of the spending of public money could be increasing the oversight role of the Audit Office and the NSW Auditor-General, empowering them to 'follow the money'.⁴⁷⁹ Instead of being restricted to the public service, the

⁴⁷⁵ Evidence, Mr Channa Wijesinghe, Chief Executive Officer, APESB, 9 August 2023, p 36.

⁴⁷⁶ Submission 10, Per Capita, p 2.

⁴⁷⁷ Submission 27, The Australia Institute, p 16.

⁴⁷⁸ Evidence, Dr Erin Twyford, Senior Lecturer, University of Wollongong, and Certified Accountant (private capacity), 28 July 2023, p 3.

⁴⁷⁹ Submission 5, Emeritus Professor James Guthrie AM FCPA, Professor John Dumay CA, Professor Jane Andrew CPA and Dr Erin Twyford CA, p 3.

Auditor-General could be empowered to 'look at the quality of work of a consulting contract and the quality of advice'.⁴⁸⁰

Committee comment

5.62 Throughout the inquiry, the committee heard of the various ways in which the NSW Government attempts to ensure that those consultants engaged by them behave in an ethical and appropriate manner. While the committee acknowledges that the Procurement Board is alert to the need for improvement, we are nonetheless concerned that in many instances government agencies are left to 'mark their own homework'. The self-attestation process appears to be lacking, and the devolved structure does not allow the Procurement Board to have effective oversight. The committee also questions the robustness of a system where the Procurement Board consists of the secretaries of government agencies, who are in effect regulating the procurement by secretaries of government agencies.

Finding 8

The current procurement framework relies on NSW government agencies 'marking their own homework', with no enforceable rules for failing to comply with procurement guidelines.

- 5.63** The committee supports the suggestion that each agency have an office responsible for the thorough oversight of all consulting engagements. We encourage the NSW Government to consider the operation of the procurement model and how it could improve so as to allow for the greater transparency and scrutiny of consulting engagements. Further, it is clear that responsibility for monitoring the behaviour of consultants cannot rest on NSW Procurement alone, and that government employees also need to be equipped for this task.
- 5.64** Outside of the NSW Government, the regulation of consultants, and the extent to which they are subject to various monitoring and enforcement mechanisms, is very much fragmented and uneven. Some consultants are subject to multiple professional bodies, in addition to other regulatory organisations. However, it is perplexing that due to the fact that anyone may refer to themselves as a consultant, others may not be under the oversight of any professional body.
- 5.65** The committee acknowledges the work of the APESB and CA ANZ in attempting to ensure the ethical behaviour of their members. We also appreciate their awareness of areas needing improvement and the work they are doing as a result. Similarly, the committee recognises that many consulting firms have their own codes of conduct, and have processes in place to encourage the ethical behaviour of their employees. However, the committee is alarmed by the large number of recent scandals involving all of the Big Four firms. While there are some exceptions where consulting firms have identified issues themselves, we are uneasy that there appears to be a tendency for unethical behaviour to come to light primarily as a result of whistleblowers and investigative journalists. It is obvious that the current monitoring and enforcement measures are lacking, and that something different is needed in terms of regulation.

⁴⁸⁰ Evidence, Emeritus Professor Guthrie, 28 July 2023, p 6.

- 5.66** Further, the committee is concerned that there do not appear to be any real consequences for those who do the wrong thing. We are of the view that without appropriate structures, you cannot stop people from doing the wrong thing. Doing the training and reading the policies is simply not the same as enforcing guidelines and ensuring compliance.
-

Finding 9

There are no real consequences for breach of governance rules by either government agencies or consultants. This leads to frequent errors and results in questionable conduct going unchecked. This lack of accountability is likely to contribute to higher expenditure from public resources than necessary, and negatively impact the public's trust in democratic institutions.

- 5.67** The committee is firmly of the view that the NSW Government needs to make changes to minimise the risks associated with engaging consultants, and prevent instances of unethical behaviour. We accordingly recommend that the NSW Government conduct a thorough review of its procurement process, and the monitoring and enforcement mechanisms contained therein, and implement the necessary changes to ensure a robust structure is in place. In addition, we recommend that the NSW Government establish an enforceable code of conduct tailored to managing consulting engagements and publicly identify firms that sign the code.
-

Recommendation 21

That the NSW Government:

- conduct a thorough review of the procurement process and policies as they relate to the engagement of consulting services, especially the mechanisms for monitoring the engagement and enforcing compliance with its requirements for ethical behaviour
- implement the necessary changes to the procurement process and policies that are identified by the review.

Recommendation 22

That the NSW Government:

- establish an enforceable code of conduct tailored to managing consulting engagements
 - publicise those consulting services that sign the code.
-

- 5.68** In addition, we recommend that the NSW Government introduce a greater range of escalating sanctions for consultants who behave unethically. These could range from the termination of the contract, removal from the supply panel, debarment from work with the NSW Government for a specified period, among other things. However, sanctions that are less severe than terminating a contract may also be warranted, including referral to a relevant professional body. Further, there should be a record of any instance of a material breach by a consultant or consultancy that would undermine the public confidence or integrity in the NSW Procurement Framework, along with a record of any action taken to address the breach.
-

Recommendation 23

That the NSW Government introduce a greater range of escalating sanctions for consultants who behave unethically.

Recommendation 24

That the NSW Government publicly disclose any instance of a material breach by a consultant or consultancy that would undermine the public confidence or integrity in the NSW Procurement Framework, along with a record of any action taken to address the breach.

5.69 Finally, it is clear to the committee that there are too many barriers preventing the proper scrutiny of consultants and contractors who are engaged by government agencies and are involved in the spending of public money. We are firmly of the view that the Audit Office of New South Wales needs to be empowered to 'follow the money' and recommend that the NSW Government take action in this regard.

5.70 In addition, we further recommend that the Public Accountability and Works Committee be empowered to require the attendance of any consulting firms who benefit from the *Professional Standards Act 1994* at hearings in future.

Recommendation 25

That the NSW Government introduce legislation that would empower the Audit Office of New South Wales to closely examine contracts with consultants and contractors, and the quality of work produced as part of their engagement.

Recommendation 26

That the Legislative Council amend the resolution establishing the Public Accountability and Works Committee to require the attendance at future hearings of any consultants and consultancies who benefit from the *Professional Standards Act 1994*.

5.71 It is clear to the committee that the large consulting firms are, in practice, akin to 'pseudo-corporations'. We are of the view that it is only appropriate that they are taxed accordingly and recommend that the NSW Treasurer advocate to federal counterparts that consulting firms not be excluded from paying company tax. We also recommend that the NSW Government introduce legislation to amend the *Payroll Tax Act 2007* to require large consulting firms to pay payroll tax on partnership earnings.

Recommendation 27

That the NSW Treasurer advocate to federal counterparts that consulting firms not be excluded from the requirement to company tax.

Recommendation 28

That the NSW Government introduce legislation to amend the *Payroll Tax Act 2007* to require large consulting firms to pay payroll tax on partnership earnings.

Appendix 1 Submissions

No.	Author
1	Auditor-General for New South Wales
2	Professor Fran Baum AO PhD and Dr Julia Anaf PhD
3	Mr Joel MacKay
4	Mr John Kite
5	Emeritus Professor James Guthrie AM, FCPA, Professor John Dumay CA, Professor Jane Andrew CPA and Dr Erin Twyford CA
6	KPMG
7	Southern Youth and Family Services
8	EY
9	Iceni
10	Per Capita Australia
11	Fire Brigade Employees' Union (FBEU)
12	Accounting Professional & Ethical Standards Board (APESB)
13	Chartered Accountants Australia and New Zealand (CA ANZ)
14	CEPA
15	Ms Sally Newham
16	Save Sydney's Koalas
17	Health Services Union
18	Deloitte
19	NSW Government
20	Public Service Association of NSW
21	Emeritus Professor Bob Walker and Dr Betty Con Walker
21a	Emeritus Professor Bob Walker and Dr Betty Con Walker
22	Mr Gerald Jaworski
23	Consult Australia
24	Mr Michael Parkinson
25	The Institute of Internal Auditors Australia
26	Unions NSW
27	The Australia Institute
28	Illawarra Women's Health Centre

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Thursday 15 June 2023 Macquarie Room Parliament House, Sydney	Ms Margaret Crawford	Auditor-General for NSW
	Mr Ian Goodwin	Deputy Auditor-General for NSW
	Ms Claudia Migotto	Assistant Auditor-General for NSW
	Mr Alfa D'Amato	Deputy Secretary and Chief Financial Officer, Financial Services and Asset Management Division, NSW Health
	Mr Phil Minns	Deputy Secretary, People, Culture and Governance Division, NSW Health
	Mr Song Hong	Executive Director, NSW Procurement
Monday 26 June 2023 Macquarie Room Parliament House, Sydney	Ms Sonya Campbell	Deputy Secretary Commercial, NSW Treasury
	Mr Michael Still	Chair, South Eastern Sydney Local Health District Board
	Mr Jonathan Doy	Chair, Finance and Performance Committee, South Eastern Sydney Local Health District Board
	Mr Tobi Wilson	Chief Executive, South Eastern Sydney Local Health District
	Mr Richard Alcock AO	Chair, Western Sydney Local Health District Board
	Ms Loretta Di Mento	Deputy Chair, Western Sydney Local Health District Board
	Ms Kristin Stubbins AM	Acting Chief Executive, PwC Australia
	Mr Nathan Schlesinger	National Health Industry Leader, PwC Australia
Hon John Ajaka	Chair, Sydney Local Health District Board	

Date	Name	Position and Organisation
	Dr Mary Haines	Member and Deputy Chair, Sydney Local Health District Board
	Dr Teresa Anderson AM	Chief Executive, Sydney Local Health District
	Adjunct Professor Mary Foley AM	Individual
Friday 30 June 2023 Macquarie Room Parliament House, Sydney	Ms Giselle Tocher	A/Executive Director, Corruption Prevention Division, NSW Independent Commission Against Corruption
	Dr Dominic Morgan ASM	Chief Executive, NSW Ambulance
	Mr Brian Jackson	Executive Director Finance and Corporate Services, NSW Ambulance
	Ms Clare Lorenzen	A/Executive Director People and Culture, NSW Ambulance
	Ms Carmen Rechbauer	Chief Executive, HealthShare NSW
	Mr Tony Coleman	Executive Director, Finance and Business Performance, HealthShare NSW
	Ms Rebecca Wark	Chief Executive, Health Infrastructure
	Mr Lucio Di Bartolomeo <i>(via videoconference)</i>	Chair, Health Infrastructure Board
	Ms Susan Pearce AM	Secretary, NSW Health, and Chair, Executive Council eHealth
	Dr Zoran Bolevich	Chief Executive, eHealth NSW, and Chief Information Officer, NSW Health
	Mr Marl Hofmeyr	Director, ICT Procurement, eHealth NSW
Friday 28 July 2023 Macquarie Room Parliament House, Sydney	Emeritus Professor James Guthrie AM	Emeritus Professor, Macquarie University, and Fellow Certified Practising Accountant (private capacity)

Date	Name	Position and Organisation
	Professor John Dumay	Professor of Accounting and Finance, Macquarie University, and Certified Accountant (private capacity)
	Dr Erin Twyford	Senior Lecturer, University of Wollongong, and Certified Accountant (private capacity)
	Ms Vanessa Chapman	Group Executive, General Counsel and Corporate Assurance, Chartered Accountants Australia and New Zealand
	Ms Kristen Wydell	General Manager – Professional Standards, Chartered Accountants Australia and New Zealand
	Mr Bill Browne <i>(via videoconference)</i>	Director, Democracy and Accountability Program, Australia Institute
	Mr Rod Campbell <i>(via videoconference)</i>	Research Director, Australia Institute
	Ms Emma Dawson <i>(via videoconference)</i>	Executive Director, Per Capita
	Ms Sarah McKenzie <i>(via videoconference)</i>	Research Associate, Per Capita
Tuesday 8 August 2023 Macquarie Room Parliament House, Sydney	Dr Catherine Williams <i>(via videoconference)</i>	Research Director, Centre for Public Integrity
	Dr Betty Con Walker	Economist, author, former NSW Treasury official
	Dr Bob Walker	Emeritus Professor of Accounting, Business School, University of Sydney, FCA
	Ms Marina van der Walt	Deputy Secretary, Financial Management and Services, NSW Treasury
	Mr Shaun Smith	Group Deputy Secretary, Corporate Services, Department of Planning and Environment, NSW Procurement Board

Date	Name	Position and Organisation
	Ms Mandy Young	Chief Operating Officer, Department of Customer Service, NSW Procurement Board
	Mr Anthony Manning	Chief Executive, School Infrastructure NSW, NSW Procurement
	Ms Sonya Campbell	Chair, NSW Procurement Board, Deputy Secretary, Commercial, NSW Treasury
	Mr Alfa D'Amato	Deputy Secretary and Chief Financial Officer, NSW Health, Procurement Board
	Mr Gary Wilson	Delegate and former Secretary, APA (NSW)
	Mr Tilak Nabi	Organiser, APA (NSW)
Wednesday 9 August 2023 Macquarie Room Parliament House, Sydney	Mr Jeremy Fewtrell	Acting Commissioner, Fire and Rescue NSW
	Mr Gerard Hayes	NSW/ACT/Qld Secretary, Health Services Union
	Ms Lauren Hutchins	NSW/ACT/Qld Assistant Secretary, Health Services Union
	Mr Leighton Drury	State Secretary, Fire Brigade Employees' Union of NSW
	Mr Jonathon Wright	Senior Organiser, Fire Brigade Employees' Union of NSW
	Dr Julia Anaf <i>(via videoconference)</i>	Research Fellow, Stretton Health Equity, Stretton Institute
	Ms Nancy Milne OAM	Chairman, Accounting Professional and Ethical Standards Board
	Mr Channa Wijesinghe	Chief Executive Officer, Accounting Professional and Ethical Standards Board
Wednesday 16 August 2023 Macquarie Room Parliament House, Sydney	Ms Susan Pearce AM	Secretary, NSW Health
	Mr Alfa D'Amato	Deputy Secretary and Chief Financial Officer, NSW Health

Date	Name	Position and Organisation
	Mr Richard Harding	Chief Executive Officer and Managing Director, icare
	Mr Adam Dent	Chief Executive, SIRA
	Ms Mandy Young	Chief Operating Officer, Department of Customer Service
	Mr Tom Imbesi	Chairman, Partner, Deloitte Australia
	Ms Sneza Pelusi	Chief Risk Officer, Partner, Deloitte Australia
	Ms Ursula Brennan	Public Sector Leader, Partner, Deloitte Australia
	Mr Allan Mills	NSW Public Sector Leader, Partner, Deloitte Australia
	Mr Stewart Little	General Secretary, Public Service Association of NSW
	Dr Andy Asquith	Research Officer, Public Service Association of NSW
Tuesday 5 September 2023 Macquarie Room Parliament House, Sydney	Mr Peter Perdikos	Director, Commercial Procurement and Transformation, Transport for NSW
	Mr Rob Halsall	Executive Director, Procurement, Transport for NSW
	Ms Janine Lonergan	Acting Chief Executive, Infrastructure NSW
	Mr Tom Gellibrand	Head of Projects, Infrastructure NSW
	Mrs Lyndal Punch	Chief Financial Officer and EFM Finance and Business Performance, Transport Asset Holding Entity (TAHE) NSW
	Mr Reynard Smith	Acting Chief Executive Officer, Transport Asset Holding Entity (TAHE) NSW
	Ms Fiona Trussell	Chief Finance and Commercial Officer, Sydney Metro

Date	Name	Position and Organisation
	Mr Paul Low	National Industry Leader, Infrastructure, Government and Healthcare, KPMG
	Mr Marcus McArdle	Risk Management Partner, Audit, KPMG
Wednesday 6 September 2023 Macquarie Room Parliament House, Sydney	Professor Brendan Lyon	Faculty of Business and Law, University of Wollongong
	Mr Angus McFarland	Branch Secretary, Australian Services Union NSW & ACT (Services) Branch
	Ms Jan Primrose	Deputy Branch Secretary, Australian Services Union NSW & ACT (Services) Branch
	Mr David Deverall	Chief Executive, NSW Treasury Corporation (TCorp)
	Mr Paul Plowman	General Manager, Asset Lifecycle, Sydney Water
	Ms Denisha Anbu	General Manager, Governance and Assurance, Sydney Water
	Mr Darren Cleary	Managing Director, Hunter Water
	Ms Jennifer Hayes	Executive Manager Finance & Business Partner, Hunter Water
	Mr James Hay	Chief Executive, EnergyCo
	Mr Andrew Lewis	Acting Deputy Secretary, Energy, Climate Change and Sustainability
	Mr Shaun Smith	Chief Operating Officer, Department of Planning and Environment
Monday 5 February 2024 Macquarie Room Parliament House, Sydney	Mr Adrian Loader	Founding Partner, Director, Allegro Funds, Scyne Advisory
	Mr Rich Gwilym	Managing Partner, Scyne Advisory
	Ms Diane Rutter	NSW Lead, Scyne Advisory
	Mrs Catherine Friday	Government and Health Sciences Leader, EY Oceania

Date	Name	Position and Organisation
	Mr Mark Nixon	Government and Public Sector Lead, EY Oceania
	Mrs Leigh Walker	Oceania Risk and Independence Leader, EY Oceania
	Mr Christopher George	Public Policy Leader, EY Oceania

Appendix 3 Minutes

Minutes no. 1

Wednesday 31 May 2023

Public Accountability and Works Committee

Room 1043, Parliament House, Sydney, at 12.32 pm

1. Members present

Ms Boyd
Mr Buttigieg
Mr Farlow
Dr Kaine
Mr Latham
Mr Primrose
Mrs Taylor

2. Tabling of resolution establishing the committee

According to Standing Order 220(1), the Committee Clerk declared the meeting open.

The Committee Clerk tabled the resolution of the House of 10 May 2023 establishing the committee, which reads as follows:

That, notwithstanding anything to the contrary contained in the standing orders:

Appointment

(1) A Public Accountability and Works Committee be appointed.

Functions

(2) The committee may inquire into and report on the public accountability, financial management, regulatory impact and service delivery of New South Wales government departments, statutory bodies or corporations. In performing this function, the committee may:

- (a) examine the consolidated financial statements and general government sector financial statements transmitted to the Legislative Council by the Treasurer,
- (b) examine the financial reports of authorities of the State, being financial reports that have been:
 - i. audited by the Auditor-General or an auditor appointed under section 47(1) of the Government Sector Audit Act 1983, or
 - ii. laid before the Legislative Council by a Minister of the Crown,
- (c) examine the opinion or any report of the Auditor-General transmitted with the consolidated financial statements and general government sector financial statements or laid before the Legislative Council with the financial report of an authority of the State (including any documents annexed or appended to any such opinion or report),
- (d) examine any report of the Auditor-General laid before the Legislative Council,
- (e) report to the Legislative Council from time to time upon any item in, or any circumstances connected with, those financial reports, or reports or documents which the committee considers ought to be brought to the notice of the Legislative Council,
- (f) report to the Legislative Council from time to time any alteration which the committee thinks desirable in the form of those financial reports or in the method of keeping them or in the method of receipt, expenditure or control of money relating to those financial reports, and

- (g) inquire into expenditure by a Minister of the Crown made without Parliamentary sanction or appropriation or otherwise than in accordance with the provisions of the Government Sector Audit 1983 or any other Act and report to the Legislative Council from time to time upon any matter connected with that expenditure which the committee considers ought to be brought to the notice of the Legislative Council.
- (3) The committee may inquire and report on all public works to be executed (including works that are continuations, completions, repairs, reconstructions, extensions, or new works) where the estimated cost of completing such works exceeds \$10 million. In performing this function, the committee is to consider:
- (a) the stated purpose of the work and the need to carry it out,
 - (b) the current and prospective public value of such work,
 - (c) the amount of revenue the work is expected to produce, where the purpose of the work is to increase revenue,
 - (d) the timeframe for carrying out the work, and
 - (e) any other related matter.

Referral of inquiries

- (4) The committee:
- (a) is to inquire into and report on any matter relevant to the functions of the committee which is referred to the committee by resolution of the House, and
 - (b) may self-refer an inquiry into any matter relevant to the functions of the committee.
- (5) A committee meeting to consider a self-reference under paragraph (4)(b) must be convened at the request of any three committee members in writing to the Committee Clerk.
- (6) The Committee Clerk must convene a meeting within seven calendar days of the receipt of the request, providing that members are given at least 24 hours' notice.
- (7) A majority of committee members is required to adopt the self-reference.
- (8) Whenever a committee resolves to self-refer a matter, the terms of reference are to be reported to the House on the next sitting day.

Membership

- (9) The committee is to consist of seven members comprising:
- (a) three government members,
 - (b) two opposition members, and
 - (c) two crossbench members.

Chair and Deputy Chair

- (10) The committee is to elect the Chair and Deputy Chair in accordance with the standing orders.
- (11) The Chair of the committee is to be a non-government member.

Conduct of committee proceedings

- (12) Unless the committee decides otherwise:
- (a) all inquiries are to be advertised via social media, stakeholder emails and a media release distributed to all media outlets in New South Wales,

- (b) submissions to inquiries are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,
- (c) attachments to submissions are to remain confidential,
- (d) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement,
- (e) the sequence of questions to be asked at hearings is to alternate between government, opposition and crossbench members, in order determined by the committee, with equal time allocated to each,
- (f) transcripts of evidence taken at public hearings are to be published,
- (g) supplementary questions are to be lodged with the Committee Clerk within two business days, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness,
- (h) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration, and
- (i) media statements on behalf of the committee are to be made only by the Chair.

3. Election of Chair

The Committee Clerk called for nominations for the Chair.

Mr Latham moved: That Ms Boyd be elected Chair of the committee.

There being no further nominations, the Clerk declared Ms Boyd elected Chair.

4. Election of Deputy Chair

Ms Boyd took the Chair.

The Chair called for nominations for Deputy Chair.

The Chair moved: That Mr Farlow be elected Deputy Chair of the committee.

There being no further nominations, the Chair declared Mr Farlow elected Deputy Chair.

5. Briefing on the resolution establishing the committee and conduct of committee proceedings

The Committee Clerk provided a briefing to committee members on the resolution establishing the committee and conduct of committee proceedings.

6. Conduct of committee proceedings

The Committee noted the Broadcast of Proceedings resolution (as amended by the Legislative Council on 19 October 2022), in particular the provisions relating to the filming, broadcasting, rebroadcasting and photography of committee proceedings, which read as follows:

(4) That unless resolved otherwise by a committee, this House authorises:

- (a) the filming, broadcasting and photography of members and witnesses in committee proceedings:
 - i. by representatives of media organisations, including from around the committee meeting table,
 - ii. by any member of the public, from the position of the audience, and

- (b) the rebroadcasting of committee proceedings on the Legislative Council and Parliament's social media channels.

7. Publication of minutes of the first meeting

Resolved, on the motion of Mr Latham: That the committee publish the minutes of the first meeting on the committee's webpage, subject to the draft minutes being circulated to members.

8. Correspondence

The committee noted the following items of correspondence:

Received

- 11 December 2022 – Email from an individual to the Public Accountability Committee, regarding allegations of corruption and RailCorp
- 20 February 2023 – Email from an individual to the Public Accountability Committee, regarding violence against women and RailCorp
- 15 April 2023 – Email from Dr Siri Gamage to secretariat, regarding potential future inquiry topics for the Public Accountability Committee to consider.

Resolved, on the motion of Mr Latham: That the committee keep the following correspondence confidential, as per the recommendation of the secretariat, as they contain identifying and/or sensitive information and are not related to an inquiry:

- 11 December 2022 – Email from an individual to the Public Accountability Committee, regarding allegations of corruption and RailCorp
- 20 February 2023 – Email from an individual to the Public Accountability Committee, regarding violence against women and RailCorp.

9. Statutory reviews

The committee noted that s 109 of the *Design and Building Practitioners Act 2020* and s 69 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* require the Public Accountability Committee to review the Acts 'as soon as possible after 30 March 2022' and that a report on the outcome be tabled 'by 30 June 2022 (or a later date determined by the Committee)'.

Resolved, on the motion of Mrs Taylor:

- that the Chair write to the NSW Building Commissioner, noting the committee's requirements under the above Acts and requesting a confidential briefing on the Commissioner's current work in this area; and
- that the Chair write to the Minister for Building, the Hon. Anoulack Chanthivong, noting the committee's requirements under the above Acts and requesting a written briefing on the Minister's current work in this area.

10. Consideration of terms of reference

The Chair tabled a letter to the Committee Clerk signed by Ms Boyd, Mr Buttigieg, Dr Kaine and Mr Latham requesting a meeting of the committee to consider the proposed terms of reference into the NSW Government's use and management of consulting services:

Inquiry into NSW Government's use and management of consulting services

- (1) That the Public Accountability and Works Committee inquire into and report on the use and management of consulting firms by NSW Government agencies, including:
 - (a) the setting and enforcement of procurement policies,
 - (b) the transparency of work undertaken by consultants, and the accountability of consultants for this work,
 - (c) the adequacy of agency classification, reporting on and disclosure requirements for the use of consultants,
 - (d) whether consultants are being used strategically and in a way that delivers value for money,
 - (e) the management of and measures to prevent conflicts of interest, breaches of contract or any other unethical behaviour,
 - (f) the impact on the capacity and future development of the NSW public service as a result of the increasing reliance on the use of consultants,
 - (g) integrity and transparency obligations of NSW Government agencies in relation to their use of consultants,
 - (h) the use of 'consultant shopping' and the poor public policy outcomes that have arisen from such practices,
 - (i) enforcement actions that have been taken previously, and the adequacy of existing legislation to support integrity agencies to investigate and enforce penalties,
 - (j) the process and timing for releasing reports unfavourable to government policy priorities and initiatives, and
 - (k) any other related matter.
- (2) That the Committee report by 31 May 2024.

Resolved, on the motion of Dr Kaine:

- that the committee adopt the terms of reference
- that the committee agree to the following via email, unless there is any disagreement among members:
 - the inquiry timeline (including the closing date for submissions and initial hearing dates); and
 - the list of stakeholders to be invited to make a submission.

11. Adjournment

The committee adjourned at 12.51 pm *sine die*.

Kate Mihaljek
Committee Clerk

Minutes no. 2

Thursday 15 June 2023

Public Accountability and Works Committee

Macquarie Room, Parliament House, Sydney at 11.00 am

1. Members presentMs Boyd, *Chair*Mr Farlow, *Deputy Chair* (from 11.39 am)

Mr Buttigieg

Mrs Carter (substituting for Mrs Taylor)

Dr Kaine

Mr Primrose

2. Apologies

Mr Latham

3. Minutes

Committee noted the publication of Minutes No. 1 as per its previous resolution.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 7 June 2023 – Email from Office of the Opposition Whip to the secretariat, advising that the Hon Susan Carter will substitute for the Hon Bronnie Taylor for the public hearing on 15 June 2023
- 7 June 2023 – Email from Michelle Vo, Executive and Ministerial Services, NSW Health, to the secretariat, nominating witnesses for 15 June 2023 and advising that NSW Health is not able to make a submission before the hearing on 15 June 2023
- 7 June 2023 – Email from Ms Shanna O'Reilly, Senior Project Officer, Government Relations and Advocacy, Australian Competition and Consumer Commission, to the secretariat, advising that the ACCC does not intend to make a submission to the inquiry
- 7 June 2023 – Email from Ms Sarah Bradshaw, Executive Officer, NSW Public Service Commission, to the Chair, advising the Public Service Commissioner has declined to make a submission to the inquiry
- 7 June 2023 – Email from Ms Vanessa Carmody-Smith, Office of the NSW Building Commissioner, to the secretariat, advising that the Building Commissioner is unavailable on 15 June 2023 to give a private briefing, but would be available on 30 June 2023.

Sent

- 6 June 2023 – Letter via email from Chair to Mr David Chandler OAM, Building Commissioner, requesting a private briefing to discuss the reviews required under the *Design and Building Practitioners Act 2020* and the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*
- 6 June 2023 – Letter via email from Chair to the Hon Anoulack Chanthivong, Minister for Building, requesting a written briefing regarding the current and planned program of the Minister, including in connection with the administration of the *Design and Building Practitioners Act 2020* and the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

5. Inquiry into the NSW Government's use and management of consulting services**5.1 Declaration of interests**

Ms Mihaljek made a declaration that her relative is a tax consultant at PwC.

5.2 Answers to questions on notice

Resolved, on the motion of Mr Primrose: That for the hearing on 15 June 2023

- NSW Health be provided with a copy of the uncorrected transcript with questions on notice highlighted following receipt of the transcript by the secretariat

- supplementary questions for NSW Health are to be lodged with the committee clerk within 24 hours of receipt of the hearing transcript and members have a truncated timeframe for reviewing any supplementary questions
- NSW Health witnesses be asked to return answers to questions on notice and supplementary questions by Friday 23 June 2023.

5.3 Submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1 and 2.

Resolved, on the motion of Mr Primrose, that the committee accept the document dated 14 June 2023 from NSW Procurement as public correspondence and not publish the document on the inquiry webpage, as per the request of the author.

5.4 Chair's video

The committee noted that on 14 June 2023 the Chair's video was published on the inquiry webpage and uploaded to YouTube.

5.5 Public hearing

Sequence of questions

Resolved, on the motion of Mrs Carter: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the public and the media were admitted.

The committee proceeded to take evidence in public at 11.15 am.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Margaret Crawford, Auditor-General for NSW
- Mr Ian Goodwin, Deputy Auditor-General for NSW
- Ms Claudia Migotto, Assistant Auditor-General for NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Alfa D'Amato, Deputy Secretary and Chief Financial Officer, Financial Services and Asset Management Division, NSW Health
- Mr Phil Minns, Deputy Secretary, People, Culture and Governance Division, NSW Health.

Ms Boyd tendered the following document:

- Spreadsheet of Local Health Districts' spending on consultants 2011-2022.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Song Hong, Executive Director, NSW Procurement
- Ms Sonya Campbell, Deputy Secretary Commercial, NSW Treasury.

The evidence concluded and the witnesses withdrew.

The hearing concluded at 4.01pm.

The public and media withdrew.

After the hearing – tendered documents

Resolved, on the motion of Mr Buttigieg: That the committee accept and publish the following document(s) tendered during the public hearing:

- Spreadsheet of Local Health Districts' spending on consultants 2011-2022, tendered by Ms Boyd.

6. Witnesses for public hearings on 26 and 30 June 2023

Resolved, on the motion of Dr Kaine: That the committee invite the following witnesses to give evidence at its public hearing on 26 June 2023:

- South Eastern Sydney Local Health District
- Sydney Local Health District
- Western Sydney Local Health District
- Gillian Skinner
- Mary Foley AM
- Kristin Stubbins and other representatives of PwC.

The committee noted that witnesses for the hearing on 30 June 2023 will be decided by email.

7. Building legislation reviews**7.1 Private briefing with the NSW Building Commissioner**

Committee noted that a private briefing by Mr David Chandler OAM, Building Commissioner will be arranged for 30 June 2023.

7.2 Record briefing for note taking purposes

Resolved, on the motion of Mr Farlow: That the secretariat records the private briefing with the NSW Building Commissioner for the purposes of assisting the secretariat's note taking, and that the recording be destroyed once the notes have been circulated to the committee.

8. Adjournment

The committee adjourned at 4.21 pm, until 26 June (second public hearing for the consultants inquiry).

Peta Leemen

Committee Clerk

Minutes no. 3

Monday 26 June 2023

Public Accountability and Works Committee

Macquarie Room, Parliament House, Sydney at 9.03 am

1. Members present

Ms Boyd, *Chair*

Mr Farlow, *Deputy Chair*

Mr Buttigieg

Mr Fang (substituting for Mrs Taylor)

Dr Kaine

Mr Primrose

2. Apologies

Mr Latham

3. Minutes

Resolved, on the motion of Mr Buttigieg: That draft minutes no. 2 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 16 June 2023 – Email from Hon Jillian Skinner to secretariat advising that she is unavailable to attend the hearings on 26 and 30 June 2023

- 16 June 2023 – Email from Mr Bill Browne, Australia Institute, to committee requesting an extension to make a submission to the inquiry until early August 2023
- 19 June 2023 – Email from Office of the Opposition Whip to the secretariat, advising that the Hon Wes Fang will substitute for the Hon Bronnie Taylor for the public hearing on 26 June 2023
- 20 June 2023 – Letter from the Hon Anoulack Chanthivong MP, Minister for Building to the Chair responding to the committee's request for a written briefing on the Minister's current and planned program of work, particularly in relation to establishing an independent building commission
- 20 June 2023 – Email from Ms Tiffany Sly, Western Sydney Local Health District, advising that the Chief Executive of the WSLHD is unable to appear on 26 June with WSLHD board members, but could make himself available to appear separately after 3 July if required
- 21 June 2023 – Email from Ms Kylie Cawley, A/Senior Executive Assistant, Office of the Building Commissioner, to secretariat, advising that the Building Commissioner accepts the committee's invitation to provide the committee with a private briefing
- 22 June 2023 – Email from Dr Jane Hall, Director, Cabinet and Parliamentary Support, NSW Ministry of Health, to Chair, requesting an extension for the return of answers to supplementary questions on notice from the hearing on 15 June 2023
- 25 June 2023 – Email from Dr Jane Hall, Director, Cabinet and Parliamentary Support, NSW Ministry of Health, to secretariat, requesting that the document provided in Tab G of its attachments to answers on questions on notice be withdrawn
- 26 June 2023 – Email from Ms Kristin Stubbins, PwC Australia, to secretariat, advising that Ms Niamh Scanlon, is unwell and unable to appear as a witness at the hearing on 26 June 2023
- 26 June 2023 – Email from Adjunct Professor Mary Foley AM to secretariat, advising that her legal adviser will be in the public gallery of the public hearing on 26 June 2023.

Sent

- 23 June 2023 – Email from the secretariat to Dr Jane Hall, Director, Cabinet and Parliamentary Support, NSW Ministry of Health advising that the committee has granted an extension for NSW Health to provide answers to supplementary questions on notice until 15 July 2023.

5. Building legislation reviews

5.1 Request to postpone the building legislation reviews

The committee considered a request from the Minister for Building that its review of the building legislation be postponed for at least six months. The committee noted the minister's advice that the government is looking to introduce a new Building Act to parliament in early 2024, and is committed to establishing an independent Building Commission. The minister has offered to provide a detailed briefing on the draft Building Act before it is finalised and introduced to parliament.

Resolved, on the motion of Mr Buttigieg: That the committee postpone its private briefing with the NSW Building Commissioner and postpone the review of the building legislation for at least six months.

6. Inquiry into the NSW Government's use and management of consulting services

6.1 Invitation to the Hon Jillian Skinner to appear as a witness

Resolved, on the motion of Mr Primrose: That the Hon Jillian Skinner be invited to appear as a witness at the public hearing later in July 2023.

6.2 Answers to questions on notice

The following answers to questions on notice were published under the resolution appointing the committee:

- NSW Ministry of Health, received 24 June 2023.

Resolved on the motion of Mr Farlow: That the committee publish the documents attached to the NSW Ministry of Health answers to questions on notice received 24 June 2023, with the exception of Tab G, the publication status of which will be considered at a later date.

6.3 Submissions

A submission was lodged on 23 June 2023 with the request that it be published and the author's name be kept confidential.

Resolved on the motion of Mr Farlow: That the committee:

- reject the document as a submission as the author has not provided any valid contact details
- accept the document as confidential correspondence, as per the recommendation of the secretariat, as it contains potential adverse mention.

6.4 Public hearing

Sequence of questions

Resolved, on the motion of Dr Kaine: That the allocation of questions to be asked at the hearing be left in the hands of the Chair, except for the session with representatives from PwC Australia, whereby the sequence of questions to be asked is to alternate between Crossbench, Government and Opposition members with equal time allocated to each.

Witnesses, the public and the media were admitted.

The committee proceeded to take evidence in public at 9.15 am.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Michael Still, Chair, South Eastern Sydney Local Health District Board
- Mr Jonathan Doy, Chair, Finance and Performance Committee, South Eastern Sydney Local Health District Board
- Mr Tobi Wilson, Chief Executive, South Eastern Sydney Local Health District.

Ms Boyd tendered the following document:

- Minutes from South Eastern Sydney Local Health District Board from February 2013 to May 2015.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Richard Alcock AO, Chair, Western Sydney Local Health District Board
- Ms Loretta Di Mento, Deputy Chair, Western Sydney Local Health District Board.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Kristin Stubbins AM, Acting Chief Executive, PwC Australia
- Mr Nathan Schlesinger, National Health Industry Leader, PwC Australia.

Ms Stubbins tendered the following document:

- Board Referral note from Mr Michael Still, Chair of SESLHD Board dated 18 August 2015 regarding potential board member conflict of interest.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- The Hon John Ajaka, Chair, Sydney Local Health District Board
- Dr Mary Haines, Member and Deputy Chair, Sydney Local Health District Board
- Dr Teresa Anderson AM, Chief Executive, Sydney Local Health District.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Adjunct Professor Mary Foley AM.

The evidence concluded and the witness withdrew.

The hearing concluded at 2.59 pm.

The public and media withdrew.

6.5 Tendered documents

Resolved, on the motion of Mr Farlow: That the committee accept and publish the following documents tendered during the public hearing:

- Minutes from South Eastern Sydney Local Health District Board from February 2013 to May 2015
- Board Referral note from Mr Michael Still, Chair of SESLHD Board dated 18 August 2015 regarding potential board member conflict of interest.

7. Adjournment

The committee adjourned at 3.03pm, until 30 June (third public hearing for the consultants inquiry).

Peta Leemen

Committee Clerk

Minutes no. 4

Friday 30 June 2023

Public Accountability and Works Committee

Macquarie Room, Parliament House, Sydney, at 10.31 am

1. Members present

Ms Boyd *Chair*

Mr Farlow *Deputy Chair* (via videoconference)

Mr Buttigieg

Dr Kaine

Mr Primrose

Mrs Taylor (from 10.31am - 1.20 pm, via teleconference from 3.00 pm)

2. Apologies

Mr Latham

3. Previous minutes

Resolved, on the motion of Mr Primrose: That draft minutes no. 3 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 26 June 2023 – Email from Ms Tiffany Sly, Director, Corporate Governance and Office of the Chief Executive, to the secretariat, regarding appearance of Ms Loretta Di Mento, Deputy Chair, Western Sydney Local Health District Board, at public hearing on 26 June 2023
- 27 June 2023 – Email from Mr Adam Hall, Division Secretary Political, Health Services Union NSW/ACT/QLD, to the secretariat, advising the HSU is unable to attend the public hearing on 30 June 2023 but is considering making a written submission by 17 July 2023
- 27 June 2023 – Email from Dr Jane Hall, Director, Cabinet and Parliamentary Support, Ministry of Health, to the secretariat, requesting that Tab G of the attachments to NSW Health's answers to questions on notice received 24 June 2023 be replaced with a publicly available version of the document
- 27 June 2023 – Email from Ms Alicia Sylvester, Senior Policy Advisor, Office of the Hon Anoulack Chanthivong MP, Minister for Building, requesting to be advised whether the Committee had agreed to postpone the building legislation reviews.

Sent

- 27 June 2023 – Email from the secretariat to the NSW Building Commissioner, advising that the committee has postponed its building legislation reviews and no longer requires a briefing on Friday 30 June 2023
- 27 June 2023 – Email from the secretariat to the office of the Hon Anoulack Chanthivong MP, Minister for Building, advising that the committee has resolved to postpone its review of the building legislation and briefing with the Building Commissioner for at least six months.

5. Inquiry into the NSW Government's use and management of consulting services**5.1 Submissions**

Resolved, on the motion of Dr Kaine: That the committee authorise the publication of submission nos. 3 and 4.

5.2 Answers to questions on notice

Resolved, on the motion of Mr Buttigieg, that the committee accept and publish the revised version of the following document, provided as Tab G of NSW Health's answers to questions on notice received 24 June 2023, and keep the version initially circulated confidential:

- Standard Commercial Framework for PMS Scheme categories 1-12 (public version).

Resolved, on the motion of Dr Kaine: That the Chair write to NSW Health to request further information in response to certain answers to questions on notice received on 24 June 2023.

5.3 Public hearing

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was called and examined:

- Ms Giselle Tocher, A/Executive Director, Corruption Prevention Division, NSW Independent Commission Against Corruption.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Dr Dominic Morgan ASM, Chief Executive, NSW Ambulance
- Mr Brian Jackson, Executive Director Finance and Corporate Services, NSW Ambulance
- Ms Clare Lorenzen, A/Executive Director People and Culture, NSW Ambulance.

Dr Morgan tendered the following document:

- NSW Ambulance procurement plan for consultant support for the statewide rostering improvement project implementation.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Carmen Rechbauer, Chief Executive, HealthShare NSW
- Mr Tony Coleman, Executive Director, Finance and Business Performance, HealthShare NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Rebecca Wark, Chief Executive, Health Infrastructure
- Mr Lucio Di Bartolomeo, Chair, Health Infrastructure Board (*via videoconference*).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Susan Pearce AM, Secretary, NSW Health, and Chair, Executive Council eHealth
- Dr Zoran Bolevich, Chief Executive, eHealth NSW, and Chief Information Officer, NSW Health

- Mr Marl Hofmeyr, Director, ICT Procurement, eHealth NSW.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.26 pm. The public and the media withdrew.

5.4 Tendered documents

Resolved, on the motion of Mr Buttigieg: That the committee accept and publish the following document tendered during the public hearing:

- NSW Ambulance procurement plan for consultant support for the statewide rostering improvement project implementation.

5.5 Future hearings

The committee noted that the next public hearing is confirmed for 28 July 2023, and the secretariat will canvass members' availability for an additional three days of hearings in the fortnight commencing 7 August 2023.

5.6 Future witnesses

The committee noted Mr Buttigieg proposed that Mr Paul Baxter, NSW Fire and Rescue Commissioner, be invited to the committee's next hearing.

6. Adjournment

Adjourned at 4.39 pm, until 28 July (fourth public hearing for the consultants inquiry).

Peta Leemen

Committee Clerk

Minutes no. 5

Friday 28 July 2023

Public Accountability and Works Committee

Macquarie Room, Parliament House, Sydney at 11.47 am

1. Members present

Ms Boyd *Chair*

Mr Farlow *Deputy Chair*

Mr Donnelly (substituting for Mr Buttigieg from 11.47 am to 12.51 pm)

Mr Fang (substituting for Mrs Taylor from 11.47 am to 12.51 pm)

Dr Kaïne (from 1.45 pm)

Ms Munro (substituting for Mrs Taylor from 3.30 pm)

Mr Primrose (via videoconference)

Ms Suvaal (substituting for Dr Kaïne from 11.47 am to 12.51 pm)

2. Apologies

Mr Latham

3. Previous minutes

Resolved, on the motion of Mr Farlow: That draft minutes no. 4 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 29 June 2023 – Email from Dr Julia Anaf PhD, Research Fellow, Stretton Health Equity, Stretton Institute, The University of Adelaide, to the secretariat providing a link to an article co-authored by

Professor Baum and Dr Anaf relating to KPMG and the National Health and Climate Strategy Consultation

- 3 July 2023 – Email from Dr Jane Hall, Director, Cabinet and Parliamentary Support, Ministry of Health, to the secretariat seeking clarification of a supplementary question from the 15 June hearing
- 4 July 2023 – Email from Mr Adrian Loader, Director, Scyne Advisory, Founding Partner Allegro Funds, to the secretariat, providing information about the agreement between Allegro Funds and PwC Australia to separate its government advisory group and establish an independent business, Scyne Advisory, focused on the public sector
- 4 July 2023 – Email from Mr Ed Yap, Senior Legal and Industrial Officer, Unions NSW, to the secretariat, requesting an extension of time to lodge a submission until 24 July 2023
- 5 July 2023 – Email from Dr Frances Foster-Thorpe, Executive Director, Shaping Futures and Data Insights Branch, Economic and Environmental Policy Group, The Cabinet Office, to the secretariat, requesting an extension to 24 July 2023 to lodge a whole-of-government submission to 24 July 2023
- 7 July 2023 – Letter via email from Mr Phil Minns, Deputy Secretary, People, Culture and Governance, to the Chair, requesting an extension to respond to certain supplementary questions from hearing on 15 June 2023
- 10 July 2023 – Email from Dr Betty Con Walker and Emeritus Professor Bob Walker, to the secretariat, requesting an extension of time to lodge a submission to 24 July 2023
- 12 July 2023 – Email from Dr Andy Asquith, Public Service Association of NSW, to the secretariat, requesting a week's extension for their submission
- 14 July 2023 – Email from Dr Dustin Halse, Health Services Union, to the secretariat, requesting an extension for their submission until 19 July 2023
- 14 July 2023 – Email from Ms Seija Duffy, A/Director, Executive and Ministerial Services, Ministry of Health, to the secretariat, advising that the NSW Health response to supplementary questions is progressing through final approvals and will be submitted soon
- 13 July 2023 – Email from Ms Rhia Kim, to the secretariat, requesting an extension of time to lodge a submission
- 17 July 2023 – Letter from a previous inquiry participant to the Chair requesting reasonable opportunity to comment on any submissions or testimony that makes claims about their work, and requesting the correspondence be kept confidential
- 17 July 2023 – Email from Dr Julia Anaf PhD, Research Fellow, Stretton Health Equity, Stretton Institute, The University of Adelaide, to the secretariat, declining an invitation to appear at a public hearing on 28 July 2023
- 17 July 2023 – Email from Professor Fran Baum AO, Stretton Health Equity, Stretton Institute, The University of Adelaide, to the secretariat, declining an invitation to appear at a public hearing on 28 July 2023
- 17 July 2023 – Email from Mr Channa Wijesinghe, Chief Executive Officer, Accounting Professional & Ethical Standards Board, to the secretariat, declining an invitation to appear at a public hearing on 28 July 2023 and noting availability to appear on another date
- 18 July 2023 – Email from Ms Alison Kirk, Manager NSW & ACT, Consult Australia, to the secretariat, declining an invitation to appear at a public hearing on 28 July 2023, noting CEO's availability for hearings on 8 and 16 August 2023, and requesting an extension of time to lodge a submission to 25 July 2023
- 18 July 2023 – Email from a previous inquiry participant to the secretariat confirming their submission will be treated as correspondence, and their objective is to have the opportunity to defend themselves, not draw attention to the matter
- 18 July 2023 – Email from Dr Andy Schmulow, to the secretariat, requesting an extension of time to lodge a submission from Dr Schmulow, Professor Brendan Lyon and Professor Corinne Cortese to 28 July 2023

- 19 July 2023 – Email from Mr Ed Yap, Senior Legal and Industrial Officer, Unions NSW, to the secretariat, requesting an extension of time to lodge a submission until 28 July 2023 and declining to attend the public hearing on 28 July 2023
- 20 July 2023 – Email from Dr Betty Con Walker to the secretariat requesting to appear on 8 August 2023 rather than 28 July
- 20 July 2023 – Email from Mr Jaspar McCahon-Boersma, Industrial Officer/Organiser, Australian Paramedics Association NSW, to the secretariat, requesting to appear on 8 or 16 August rather than 9 August due to other commitments
- 21 July 2023 – Email from Mr Tom Marshall, Director, Government Relations and Advocacy, Executive Office, ACCC, to the secretariat, declining the committee's invitation to appear on 28 July, and advising the ACCC would consider and provide a detailed response to specific questions put to them
- 24 July 2023 – Email from Ms Catherine Williams, Research Director, Centre for Public Integrity, to the secretariat, advising that she is unable to attend a public hearing on 28 July due to illness, requesting to appear at a future date
- 24 July 2023 – Letter from Ms Susan Pearce AM, Secretary, NSW Health, to the Chair, providing additional information in response to questions on notice taken at the hearing on 15 June 2023
- 24 July 2023 – Email from Mr Joe Prater, Senior Business Partner, Executive and Ministerial Services, NSW Health, to the secretariat, advising that answers to questions on notice taken by Local Health District representatives on 26 June 2024 are in the final stage of approval and will be provided on 25 July 2023
- 27 July 2023 – Email from the Office of the Opposition Whip to the secretariat regarding substitutions for the public hearing on 28 July 2023
- 27 July 2023 – Email from the Office of the Government Whip to the secretariat regarding substitutions for the public hearing on 28 July 2023
- 28 July 2023 – Email from Ms Alexandra Milcz, Senior Parliamentary and Cabinet Officer, Executive & Ministerial Services, Financial Management and Services, NSW Treasury, to the secretariat requesting that Ms Sonya Campbell, Deputy Secretary – Commercial, NSW Treasury, attend the hearing on 8 August 2023 in place of Mr Michael Coutts-Trotter, Secretary, NSW Treasury.

Sent

- 3 July 2023 – Email from the secretariat to Dr Julia Anaf PhD, Research Fellow, Stretton Health Equity, Stretton Institute, The University of Adelaide, advising that the emailed article would be accepted as correspondence rather than a supplementary submission
- 4 July 2023 – Email from the secretariat to Dr Jane Hall, Director, Cabinet and Parliamentary Support, Ministry of Health, providing clarification to a supplementary question from the 15 June hearing
- 4 July 2023 – Letter from the Chair to Dr Jane Hall, Director, Cabinet and Parliamentary Support, Ministry of Health, asking for elucidation of answers to questions on notice provided by NSW Health on 24 June 2023
- 4 July 2023 – Email from the secretariat to Mr Ed Yap, Senior Legal and Industrial Officer, Unions NSW, granting an extension of time to lodge a submission until 24 July 2023
- 7 July 2023 – Email from the secretariat to Mr Joe Prater, Senior Business Partner, Executive and Ministerial Services, NSW Health, on behalf of Mr Phil Minns, Deputy Secretary, People, Culture and Governance, to Chair, granting an extension of time to respond to certain supplementary questions from hearing on 15 June 2023 until 4 August 2023
- 7 July 2023 – Email from the secretariat to Dr Frances Foster-Thorpe, Executive Director, Shaping Futures and Data Insights Branch, Economic and Environmental Policy Group, The Cabinet Office, granting an extension to 24 July 2023 to lodge a whole-of-government submission to 24 July 2023
- 10 July 2023 – Email from the secretariat to Dr Betty Con Walker and Emeritus Professor Bob Walker, granting an extension of time to lodge a submission until 24 July 2023
- 18 July 2023 – Email from the secretariat to Dr Andy Schmulow, granting an extension to lodge a submission

- 19 July 2023 – Email from the secretariat to Ms Alison Kirk, Manager NSW & ACT, Consult Australia, granting an extension of time to lodge a submission until 25 July 2023
- 19 July 2023 – Email from the secretariat to Mr Ed Yap, Senior Legal and Industrial Officer, Unions NSW, granting an extension of time to lodge a submission until 28 July 2023 Inquiry into the NSW Government's use and management of consulting services.

4.1 Submissions

The following submissions were published under the resolution appointing the committee: submission nos. 5-10, 12-21.

4.2 Submission no. 11

Resolved, on the motion of Mr Donnelly, that:

- in accordance with the procedural fairness resolution, Mr Paul Baxter, Dr Marc Stigter, Mr John Renshaw and Mr Michael Taylor be invited to provide a written response in relation to potential adverse mention contained in submission no. 11 by 7 August 2023
- the committee keep the following information confidential, as per the recommendation of the secretariat: names of other identified individuals mentioned in submission no. 11
- the redacted version of the submission be published after 7 August 2023 or receipt of responses from Mr Baxter, Dr Stigter, Mr Renshaw and Mr Taylor whichever occurs first.

4.3 Answers to questions on notice and supplementary questions

The following answers to questions on notice and supplementary questions were published under the resolution appointing the committee

- answers to questions on notice from Ms Margaret Crawford, Auditor-General, Audit Office of NSW, received 10 July 2023
- answers to questions on notice and supplementary questions from NSW Treasury, received 11 July 2023
- answers to supplementary questions from NSW Health, received 17 July 2023, with names of individuals redacted as per the request from NSW Health
- additional answers to questions on notice from the 15 June hearing (response to Chair's request for additional information) from NSW Health, received 24 July 2023
- answers to questions on notice and supplementary questions from Ms Jan McCahey, Chief Risk and Ethics Leader, PwC on behalf of Ms Kristin Stubbins, PwC Australia, received 24 July 2023
- answers to questions on notice and supplementary questions from the NSW Ministry of Health, on behalf of South Eastern Sydney Local Health District, Western Sydney Local Health District and Sydney Local Health District, received 26 July 2023.

Resolved, on the motion of Ms Suvaal: That the committee keep confidential the names of individuals contained in the supplementary answers to questions from NSW Health, received 17 July 2023, as per the request from NSW Health.

4.4 Correspondence regarding procedural fairness to inquiry participants

Resolved, on the motion of Mr Farlow:

- That the Chair respond to a previous inquiry participant, noting their request and providing information on the application of the procedural fairness resolution, and
- That the correspondence from the previous inquiry participant be kept confidential, and their name redacted from the minutes.

4.5 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters

The following witnesses were sworn and examined:

- Emeritus Professor James Guthrie AM, Emeritus Professor, Macquarie University, and Fellow Certified Practising Accountant (private capacity)

- Professor John Dumay, Professor of Accounting and Finance, Macquarie University, and Certified Accountant (private capacity)
- Dr Erin Twyford, Senior Lecturer, University of Wollongong, and Certified Accountant (private capacity).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance, Chartered Accountants ANZ
- Ms Kristen Wydell, General Manager – Professional Standards, Chartered Accountants ANZ.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Bill Browne, Director, Democracy and Accountability Program, Australia Institute (via videoconference)
- Mr Rod Campbell, Research Director, Australia Institute (via videoconference).

Dr Kaine declared that she was previously on the board of the Centre for Future Work, which is associated with the Australia Institute.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Emma Dawson, Executive Director, Per Capita, (via videoconference)
- Ms Sarah McKenzie, Research Associate, Per Capita (via videoconference).

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 5.01 pm. The public and the media withdrew.

4.6 NSW Treasury witnesses for 8 August public hearing

The committee considered correspondence from NSW Treasury requesting that Ms Sonya Campbell, Deputy Secretary Commercial, NSW Treasury, appear at the hearing on 8 August 2023, rather than Mr Michael Coutts-Trotter, Secretary, NSW Treasury.

Resolved, on the motion of Dr Kaine: That NSW Treasury be advised that Mr Coutts-Trotter is not required to attend the public hearing on 8 August 2023, and that Ms Campbell may attend the hearing accompanied by another Treasury representative who can answer questions about NSW Treasury's use of consultants, and the NSW budget process.

4.7 Declaration of interests

Dr Kaine made a declaration that her husband had recently published an article in *The Conversation* relating to the use of external consultants by government.

5. Adjournment

The committee adjourned at 5.07 pm until 8 August 2023 (fifth public hearing for the consultants inquiry).

Peta Leemen

Committee Clerk

Minutes no. 6

Tuesday 8 August 2023

Public Accountability and Works Committee

Macquarie Room, Parliament House, Sydney, at 10.46 am

6. Members present

Ms Boyd, *Chair*
Mr Farlow, *Deputy Chair*
Mr Buttigieg
Dr Kaine
Mr Primrose
Mrs Taylor (via videoconference)

7. Apologies

Mr Latham

8. Previous minutes

Resolved, on the motion of Mr Farlow: That draft minutes no. 5 be confirmed.

9. Correspondence

The committee noted the following items of correspondence:

Received

- 26 July 2023 – Email from Mr Adrian Loader, Founder and Managing Director, Allegro Funds, to secretariat, declining invitation to appear until early September
- 28 July 2023 – Letter from Ms Sally Stevenson, Executive Director, Illawarra Women's Health Centre, to Chair, requesting extension to submission deadline
- 28 July 2023 – Email from Mr Joe Prater, Senior Business Partner, Executive and Ministerial Services, NSW Health, to secretariat, noting that the post hearing responses from eHealth NSW, HealthShare NSW, Health Infrastructure and NSW Ambulance will be provided to the committee on 31 July 2023
- 31 July 2023 – Email from the Hon Jillian Skinner, to secretariat, declining the committee's invitation to appear at the hearing on 8 August 2023
- 31 July 2023 – Email from Shaye Candish, General Secretary, Nurses and Midwives Association, declining the invitation to appear at the hearing on 9 August 2023
- 31 July 2023 – Email from Mr Joe Prater, Senior Business Partner, Executive and Ministerial Services, NSW Health to secretariat, noting that the post hearing responses from eHealth NSW, HealthShare NSW, Health Infrastructure and NSW Ambulance are still in the final stages of approval
- 31 July 2023 – Letter from an inquiry participant, to Chair, responding to possible adverse mention in Submission 11
- 1 August 2023 – Email from Dr Jane Hall, Director, Cabinet and Parliamentary Support, Ministry of Health, to secretariat, advising that the post hearing responses from eHealth NSW, HealthShare NSW, Health Infrastructure and NSW Ambulance are still in the final stages of approval
- 1 August 2023 – Email from Ms Alexandra Milcz, Senior Parliamentary and Cabinet Officer, NSW Treasury, advising of additional Treasury witness
- 2 August 2023 – Email from Portfolio Committee No. 8 – Customer Service, to committee, forwarding a letter from the Fire Brigade Employees Union, outlining concerns about statements made by former Commissioner Paul Baxter at Budget Estimates on 2 September 2022
- 3 August 2023 – Email from Ms Alexandra Milcz, Senior Parliamentary and Cabinet Officer, NSW Treasury, requesting that a support person accompany the Treasury witnesses at the hearing on 8 August
- 4 August 2023 – Letter from Dr Marc Stigter, to Chair, responding to possible adverse mention in Submission 11
- 4 August 2023 – Email from Mr Jeremy Fewtrell, Acting Commissioner, Fire and Rescue NSW, responding to possible adverse mention in Submission 11.

Sent

- 28 July 2023 – Email from secretariat, to Ms Alexandra Milcz, Senior Parliamentary and Cabinet Officer, NSW Treasury, advising that Ms Campbell may attend the hearing on 8 August along with another Treasury representative

- 28 July 2023 – Letter from Chair, to an inquiry participant, inviting a response to possible adverse mention
- 28 July 2023 – Letter from Chair, to an inquiry participant, inviting a response to possible adverse mention
- 28 July 2023 – Letter from Chair, to Dr Marc Stigter, inviting a response to possible adverse mention
- 31 July 2023 – Letter from Chair, to previous inquiry participant, regarding the application of the Legislative Council's procedural fairness resolution
- 2 August 2023 – Letter from Chair, to Mr Jeremy Fewtrell, Acting Commissioner, Fire and Rescue NSW, inviting a response to possible adverse mention.

Resolved, on the motion of Dr Kaine:

- the committee keep the correspondence from the secretariat to a previous inquiry participant, regarding the application of the Legislative Council's procedural fairness resolution, dated 31 July 2023, confidential, as per the recommendation of the secretariat, as it contains identifying and/or sensitive information
- the committee keep the following information confidential, as per the recommendation of the secretariat: name of identified individual mentioned in correspondence from Fire Brigade Employees Union and its associated attachments, received on 2 August 2023.

10. Inquiry into the NSW Government's use and management of consulting services

10.1 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Dr Catherine Williams (via videoconference).

The evidence concluded and the witness withdrew.

The public and the media withdrew.

The committee held a private meeting.

10.2 Supplementary submission 21

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of supplementary submission 21, with the exception of potential adverse mention, which is to remain confidential, as per the recommendation of the secretariat.

10.3 Public hearing

The committee recommenced its public hearing.

Witnesses, the public and the media were readmitted.

The following witnesses were sworn and examined:

- Dr Betty Con Walker, Economist, author, former NSW Treasury official
- Dr Bob Walker, Emeritus Professor of Accounting, Business School, University of Sydney, FCA.

Dr Con Walker tender the following document:

- NSW Public Service Commission, State of the NSW Public Sector Report 2022, p 16.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Marina van der Walt, Deputy Secretary, Financial Management and Services, NSW Treasury
- Mr Shaun Smith, Group Deputy Secretary, Corporate Services, Department of Planning and Environment, NSW Procurement Board
- Ms Mandy Young, Chief Operating Officer, Department of Customer Service, NSW Procurement Board

- Mr Anthony Manning, Chief Executive, School Infrastructure NSW, NSW Procurement.

The Chair reminded the following witnesses that they did not need to be sworn, as they had been sworn at an earlier consultants inquiry hearing before the committee:

- Ms Sonya Campbell, Chair, NSW Procurement Board, Deputy Secretary, Commercial, NSW Treasury
- Mr Alfa D'Amato, Deputy Secretary and Chief Financial Officer, NSW Health, Procurement Board.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Gary Wilson, Delegate and former Secretary, APA(NSW)
- Mr Tilak Nabi, Organiser, APA(NSW).

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.13 pm. The public and the media withdrew.

10.4 Tendered documents

Resolved on the motion of Mr Farlow That the committee accept and publish the following document tendered during the public hearing:

- NSW Public Service Commission, State of the NSW Public Sector Report 2022, p 16.

10.5 Submission 11

In accordance with the procedural fairness resolution, Dr Marc Stigter and others were invited to provide a written response in relation to potential adverse mention contained in Submission 11.

Publication of Submission 11

Resolved, on the motion of Dr Kaine: That the committee authorise the publication of Submission 11 with the exception of the following information which is to remain confidential:

- identifying information and/or sensitive information, or potential adverse mention, as identified by the secretariat
- redactions requested by an inquiry participant except for the second and third sentences of the first paragraph
- redactions requested by Fire and Rescue NSW regarding the names of certain former Fire and Rescue NSW employees.

Correspondence from the secretariat regarding opportunity to respond

Resolved, on the motion of Mr Farlow: That:

- the committee keep the correspondence from the secretariat to two inquiry participants and Dr Marc Stigter, inviting a response to possible adverse mention, dated 28 July 2023, be kept confidential as they contain identifying and/or sensitive information
- the committee keep the correspondence from the secretariat to Mr Jeremy Fewtrell, Acting Commissioner, Fire and Rescue NSW, inviting a response to possible adverse mention, dated 2 August 2023, be kept confidential as it contains identifying and/or sensitive information.

Correspondence in responses to opportunity to respond

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of the correspondence from Dr Marc Stigter received on 4 August 2023, except for identifying information and/or sensitive information, or potential adverse mention, as identified by the secretariat.

Resolved, on the motion Mr Farlow: That the committee keep the correspondence from an inquiry participant and Fire and Rescue NSW, responding to possible adverse mention, confidential as per the request of the authors.

Request for certain matters to be heard *in camera*

Resolved, on the motion of Mr Primrose: That the secretariat contact the Fire Brigade Employees Union and Fire and Rescue NSW to advise that their evidence will be taken in public and that they should not make comments concerning the information that the committee has resolved to keep confidential in Submission 11, including the identities of certain individuals.

Minutes

Resolved, on the motion of Mr Farlow: That the names of two inquiry participants be redacted from the minutes.

10.6 Submission 22

Resolved, on the motion of Mr Farlow: That:

- in accordance with the Procedural Fairness Resolution, Chartered Accountants Australia and New Zealand be invited to provide a written response in relation to potential adverse mention contained in Submission 22 by 22 August 2023
- the committee consider authorising the publication of Submission 22, with the exception of potential adverse mention which is to remain confidential, per the recommendation of the secretariat after 22 August 2023.

10.7 Extension requests for submissions

Committee noted that the Chair will grant all submission extension deadline requests received before the end of September 2023.

10.8 Answers to questions on notice and supplementary questions

Committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice and supplementary questions from Ms Giselle Tocher, Principal Corruption Prevention Officer, NSW Independent Commission Against Corruption, received 28 July 2023
- answers to questions on notice and supplementary questions from Mr Joe Prater, Senior Business Partner, Executive and Ministerial Services, NSW Health, on behalf of eHealth NSW, Health Infrastructure, HealthShare NSW and NSW Ambulance, received 2 August 2023.

Attachments to answers to supplementary questions notice from NSW Health received on 2 August

Committee noted that on 4 August, NSW Health provided the secretariat with a USB containing a tranche of documents as part of its supplementary answers to questions on notice. NSW Health requested that the attachments remain confidential. The secretariat is not in a position to review the thousands of pages of documents.

Resolved, on the motion of Dr Kaine: That the attachments to answers to supplementary questions notice from NSW Health received on 2 August 2023 be kept confidential and members should contact the secretariat if they identify certain documents that they would like to consider for publication.

11. Adjournment

The committee adjourned at 4.28 pm until 9.00 am on 9 August 2023 (sixth public hearing for the consultants inquiry).

Kate Mihaljek
Committee Clerk

Minutes no. 7

Wednesday 9 August 2023

Public Accountability and Works Committee

Macquarie Room, Parliament House, Sydney, at 9.02 am

1. Members present

Ms Boyd, *Chair*

Mr Farlow, *Deputy Chair*

Mr Buttigieg

Dr Kaine

Mr Latham (until 12.39 pm)
Ms Merton (participating from 10.24 am until 12.10 pm)
Mr Primrose (until 12.39 pm)
Mrs Taylor (via videoconference until 12.39 pm)

2. Correspondence

The committee noted the following items of correspondence:

Received

- 3 August 2023 – Email from Ms Karen Pooley, PA/Office Administrator, Consult Australia to secretariat, unable to appear at hearing on 9 August 2023.

3. Inquiry into the NSW Government's use and management of consulting services

3.1 Submissions

Committee noted the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 23.

3.2 Answers to questions on notice and supplementary questions

Committee noted following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to supplementary questions 2 and 24 from Mr Joe Prater, Senior Business Partner, Executive and Ministerial Services, NSW Health, received 4 August 2023.

3.3 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Jeremy Fewtrell, Acting Commissioner, Fire and Rescue NSW.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Gerard Hayes, NSW/ACT/Qld Secretary, Health Services Union
- Ms Lauren Hutchins, NSW/ACT/Qld Assistant Secretary, Health Services Union.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Leighton Drury, State Secretary, Fire Brigade Employees' Union of NSW
- Mr Jonathon Wright, Senior Organiser, Fire Brigade Employees' Union of NSW.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Julia Anaf, Research Fellow, Stretton Health Equity, Stretton Institute (via videoconference).

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Nancy Milne, Chairman, Accounting Professional and Ethical Standards Board
- Mr Channa Wijesinghe, Chief Executive Officer, Accounting Professional and Ethical Standards Board.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.12 pm. The public and the media withdrew.

3.4 September hearings

The committee agreed to hold additional hearings on 5 and 6 September, with a reserve day on 22 September.

4. **Adjournment**

The committee adjourned at 3.20 pm until Wednesday 16 August (seventh public hearing for the consultants inquiry).

Talina Drabsch
Committee Clerk

Minutes no. 8

Wednesday 16 August 2023

Public Accountability and Works Committee

Macquarie Room, Parliament House, Sydney, at 9.01 am.

1. **Members present**

Ms Boyd, *Chair*

Mr Farlow, *Deputy Chair*

Mr Buttigieg (via videoconference)

Dr Kaine

Mr Latham (until 2.37 pm)

Ms Munro (substituting for Mrs Taylor from 2.48 pm – 5.06 pm)

Mr Primrose (from 9.01 am – 9.59 am and 1.30 pm – 5.06 pm)

Mrs Taylor (until 12.16 pm)

2. **Previous minutes**

Resolved, on the motion of Mr Farlow: That draft minutes nos. 6 and 7 be confirmed.

3. **Correspondence**

The committee noted the following items of correspondence:

Received

- 9 August 2023 – Email from Mr Jonathon Wright, Senior Organiser, Fire Brigade Employees' Union of NSW to secretariat, raising an issue about the hearing on 9 August 2023
- 10 August 2023 – Email from Mr Robert Close, Fire Brigade Employees' Union of NSW, to secretariat, regarding requested GIPA documents
- 11 August 2023 – Email from Mr Jonathon Wright, Senior Organiser, Fire Brigade Employees' Union of NSW, to secretariat, amending previous correspondence.

Sent

- 7 August 2023 – Email from secretariat, to Mr Joe Prater, Senior Business Partner, Executive and Ministerial Services, NSW Health, requesting provision of minutes missing from the SESLHD documents
- 8 August 2023 – Email from secretariat, to Mr Jonathon Wright and Mr Leighton Drury, Fire Brigade Employees' Union of NSW, advising of redactions to Submission 11
- 8 August 2023 – Email from secretariat, to Ms Louise Clarke and Mr Jeremy Fewtrell, Fire and Rescue NSW, advising of redactions to Submission 11
- 9 August 2023 – Email from secretariat, to an inquiry participant, advising of redactions to Submission 11
- 9 August 2023 – Email from secretariat, to Dr Marc Stigter, advising that the committee will publish his correspondence dated 4 August 2023 subject to specified redactions
- 9 August 2023 – Email from secretariat, to Mr Jonathon Wright, Senior Organiser, Fire Brigade Employees' Union of NSW, responding to issue raised about the hearing on 9 August

- 11 August 2023 – Letter from Chair, to Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance, Chartered Accountants Australia and New Zealand, inviting a response to possible adverse mention.

Resolved, on the motion of Mr Farlow: That the committee keep confidential the following correspondence, as per the recommendation of the secretariat, as they contain identifying and/or sensitive information:

- correspondence to Fire Brigade Employees' Union and Fire and Rescue NSW, advising of redactions to Submission 11, dated 8 August 2023
- correspondence to an inquiry participant, advising of redactions to Submission 11, dated 9 August 2023
- correspondence to Dr Marc Stigter, advising that the committee will publish his correspondence dated 4 August 2023 subject to specified redactions, dated 9 August 2023
- correspondence to Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance, Chartered Accountants Australia and New Zealand, inviting a response to possible adverse mention, dated 10 August 2023.
- attachments to correspondence from Mr Robert Close, Fire Brigade Employees' Union of NSW to the secretariat, regarding requested GIPA documents, dated 10 August 2023.

Resolved, on the motion of Mr Primrose: That an inquiry participant's name be redacted from minutes no. 8.

4. Inquiry into the NSW Government's use and management of consulting services

4.1 Submissions

Committee noted that submissions nos. 24 and 25 were published by the committee clerk under the authorisation of the resolution appointing the committee.

4.2 Submission no. 26

Resolved, on the motion of Mr Primrose, that the committee authorise publication of submission no. 26, and that the Chair write to the Central Coast Local Health District inviting them to respond to potential adverse mention contained in the submission.

4.3 Statement made by Australian Paramedics Association in hearing on 9 August 2023

It was brought the committee's attention that a statement made by the Australian Paramedics Association at the hearing on 9 August 2023 may need further clarification.

Resolved, on the motion of Mr Buttigieg: That the Chair write to the Australian Paramedics Association, inviting them to substantiate the assertion that they represent the majority of frontline paramedics in New South Wales.

4.4 Answers to supplementary questions from NSW Health received on 2 August

The committee had previously resolved to keep the documents provided on USB by NSW Health as part of its answers to questions on notice confidential unless members identified certain documents they would like considered for publication. Additionally, NSW Health had requested they be given the chance to review documents proposed for publication for sensitive information.

The Chair proposed that certain documents from the South Eastern Sydney Local Health District be published.

Resolved, on the motion of Mr Primrose, that the following document be published subject to redactions requested by representatives of NSW Health:

- South Eastern Sydney Local Health District Finance and Performance Committee meeting minutes of 29 June 2015.

4.5 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The Chair reminded the following witnesses that they did not need to be sworn, as they had been sworn at an earlier consultants inquiry hearing before the committee:

- Ms Susan Pearce AM, Secretary, NSW Health
- Mr Alfa D'Amato, Deputy Secretary and Chief Financial Officer, NSW Health.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Richard Harding, Chief Executive Officer and Managing Director, icare.

Ms Boyd tabled the following document:

- Appendix 10 of the icare 2017-2018 annual report.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Adam Dent, Chief Executive, SIRA

The Chair reminded the following witness that she did not need to be sworn, as she had been sworn at an earlier consultants inquiry hearing before the committee:

- Ms Mandy Young, Chief Operating Officer, Department of Customer Service.

Ms Boyd tabled the following documents:

- Customer Service/SIRA Actuarial Services Agreement - SIRA/2460
- Customer Service/Master services contract Actuarial services – SIRA/2460-1
- Customer Service/Provision of Actuarial Services for the State Insurance Regulatory Authority – SIRA/6358/2016.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Tom Imbesi, Chairman, Partner, Deloitte Australia
- Ms Sneza Pelusi, Chief Risk Officer, Partner, Deloitte Australia
- Ms Ursula Brennan, Public Sector Leader, Partner, Deloitte Australia
- Mr Allan Mills, NSW Public Sector Leader, Partner, Deloitte Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Stuart Little, General Secretary, Public Service Association of NSW
- Dr Andy Asquith, Research Officer, Public Service Association of NSW.

Mr Little tendered the following documents:

- Data on NSW Government consultant spend 2021-22
- Data on NSW Government contract labour.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 5.03 pm. The public and the media withdrew.

4.6 Tendered documents

Resolved, on the motion of Mr Primrose: That the committee accept and publish the following documents tendered during the public hearing:

- Appendix 10 of the icare 2017-2018 annual report
- Customer Service/SIRA Actuarial Services Agreement - SIRA/2460
- Customer Service/Master services contract Actuarial services – SIRA/2460-1
- Customer Service/Provision of Actuarial Services for the State Insurance Regulatory Authority – SIRA/6358/2016
- Data on NSW Government consultant spend 2021-22

- Data on NSW Government contract labour.

4.7 Answers to questions on notice and supplementary questions

On 8 August 2023, the committee received an additional set of minutes from the SESLHD, dated 25 June 2014, that were missing from the attachments to the NSW Health supplementary answers to questions on notice received on 4 August 2023.

Resolved, on the motion of Ms Munro: That the additional set of SESLHD minutes that are attachments to the supplementary questions on notice received from NSW Health on 4 August 2023 be kept confidential.

On 11 August 2023 and 15 August 2023, the committee received further responses from NSW Health to supplementary questions on notice from the hearing on 15 June 2023. This included the provision of documents on a USB which NSW Health requested remain confidential. Additionally, NSW Health requested they be given the chance to review documents proposed for publication for sensitive information.

Resolved, on the motion of Ms Munro: That the attachments to answers to supplementary questions on notice received from NSW Health on 11 August 2023 and 15 August 2023 be kept confidential and members should contact the secretariat if they identify certain documents that they would like to consider for publication.

5. Adjournment

The committee adjourned at 5.06 pm until Tuesday 5 September 2023 (eighth public hearing for the consultants inquiry).

Peta Leemen

Committee Clerk

Minutes no. 13

Tuesday 5 September 2023

Public Accountability and Works Committee

Macquarie Room, Parliament House, Sydney, at 9.01 am.

1. Members present

Ms Boyd, *Chair*

Mr Farlow, *Deputy Chair*

Mr Buttigieg

Mr Fang (substituting for Mrs Taylor)

Dr Kaine

Mr Primrose

2. Apologies

Mr Latham

3. Correspondence

The committee noted the following items of correspondence:

Received

- 15 August 2023 – Letter from Ms Nancy Milne OAM, Chairman, Accounting Professional & Ethical Standards Board Limited, to the committee, providing correction to evidence given at the public hearing on 9 August 2023
- 17 August 2023 – Email from the Office of the Opposition Whip confirming the substitution of the Hon Jacqui Munro for the Hon Bronnie Taylor for the afternoon of the public hearing on 16 August
- 18 August 2023 – Email from the Office of the Opposition Whip to the secretariat advising that the Hon Wes Fang will substitute for the Hon Bronnie Taylor for the public hearings on 5 and 6 September 2023

- 22 August 2023 – Letter from Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance, CA ANZ, to the Chair, responding to adverse mention in Submission 22, requesting the response be kept confidential
- 23 August 2023 – Letter from Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance, CA ANZ, to the Chair providing clarification and additional information to evidence given at the public hearing on 28 July 2023
- 23 August 2023 – Letter from Ms Louise Clarke, Executive Director, Office of the Commissioner, Fire + Rescue NSW, to the Chair, seeking adjustments to supplementary questions from the hearing on 9 August 2023
- 28 August 2023 – Email from Dr Betty Con Walker and Emeritus Professor Bob Walker, to the secretariat, providing additional information on calls for a code of ethics for economic consultants
- 28 August 2023 – Email from Ms Suzanna Hall, EA to Richard Olsen, Transport Workers' Union of NSW, to the secretariat, advising that TWU representatives are not available to appear at the hearing on 6 September 2023
- 31 August 2023 – Letter from Mr Gary Wilson, APA (NSW) Delegate/Paramedic, to the Chair, providing clarification of evidence to the committee on the number of paramedics represented by the APA (NSW)
- 31 August 2023 – Email from Mr Gary Wilson, Delegate/Paramedic, Australian Paramedics Association (NSW), to the secretariat, requesting that the response to the Chair's letter of 18 August 2023 be kept confidential.

Sent

- 18 August 2023 – Letter from the Chair to Mr Scott McLachlan, Chief Executive, Central Coast Local Health District in relation to possible adverse mention in Submission no. 27
- 18 August 2023 – Letter from the Chair to Mr Gary Wilson, APA NSW, requesting clarification of evidence to the committee
- 25 August 2023 – Email from the secretariat to Mr Ivan Mills, Fire + Rescue NSW, advising that the Chair had agreed to proposed adjustments to the scope of supplementary questions to FRNSW from the hearing on 9 August 2023.

Resolved, on the motion of Dr Kaine: That the committee:

- authorise the publication of correspondence from Ms Nancy Milne OAM, Accounting Professional & Ethical Standards Board Limited, received 14 August 2023, providing corrections to evidence given at the public hearing on 9 August 2023
- keep confidential correspondence from Ms Vanessa Chapman, CA ANZ, received 22 August 2023, responding to adverse mention in Submission no. 22, as per request of the author
- keep confidential correspondence from Mr Gary Wilson, APA (NSW), received on 31 August 2023, providing clarification of the number of paramedics represented by APA (NSW) as per the request of the author.

4. Inquiry into the NSW Government's use and management of consulting services

4.1 Public submissions

The committee noted that the following submission was published by the secretariat under the authorisation of the resolution establishing the committee: Submission no. 28.

Resolved, on the motion of Mr Fang: That:

- the committee authorise the publication of Submission no. 27
- in accordance with the procedural fairness resolution, the following individuals/organisations be invited to provide a written response in relation to potential adverse mention contained in Submission no. 27 by 21 September 2023:
 - Department of Planning and Environment
 - Mr Stephen Brown, formerly of Cadence Economics
 - Ms Heather Watson

- Mr Brian Fisher, BAEconomics.

4.2 Answers to questions on notice and supplementary questions

The following answers to questions on notice were published under the resolution establishing the committee:

- Mr Bill Browne, The Australia Institute, received 22 August 2023
- Ms Vanessa Chapman, CA ANZ, (clarification of points of evidence on professional standards scheme) received 23 August 2023
- Ms Vanessa Chapman, CA ANZ (answers to supplementary questions) received 25 August 2023
- Ms Sarah McKenzie, Per Capita, received 29 August 2023
- Ms Vanessa Chapman, CA ANZ, (answer to question on notice - supplementary information to submission 13 regarding process of Professional Conduct Committee and Disciplinary Tribunal), received 31 August 2023.

Answers to questions on notice from Professor James Guthrie et al

Resolved, on the motion of Mr Farlow: That:

- the committee authorise the publication of the answers to questions on notice from Professor James Guthrie et al, received 15 August 2023
- in accordance with the procedural fairness resolution, Ms Heather Watson be invited to provide a written response in relation to potential adverse mention contained in the answers to questions on notice provided by Professor James Guthrie et al by 21 September 2023.

Answers to questions on notice from Chartered Accountants Australia New Zealand

Resolved, on the motion of Mr Fang: That the committee keep confidential the answer to the question on notice from CA ANZ regarding a current investigation by the CA ANZ Professional Conduct Committee, received 25 August 2023, as per the request of the author.

4.3 Opportunity to respond to Submission no. 22

Resolved, on the motion of Dr Kaine: That the secretariat write to CA ANZ requesting that it identify specific redactions to Submission no. 22 for the committee's consideration, and that the committee consider publishing the submission following receipt of this correspondence.

4.4 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Peter Perdikos, Director, Commercial Procurement and Transformation, Transport for NSW
- Mr Rob Halsall, Executive Director, Procurement, Transport for NSW.

The Chair tendered the following documents:

- Contract notice – Infrastructure NSW - Commercial Director for Projects NSW – INSW2057
- Contract notice – Transport for NSW - Project Management Services – 4200276524
- LinkedIn Profile – Bryan Tran.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Janine Lonergan, Acting Chief Executive, Infrastructure NSW
- Mr Tom Gellibrand, Head of Projects, Infrastructure NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mrs Lyndal Punch, Chief Financial Officer and EFM Finance and Business Performance, Transport Asset Holding Entity (TAHE) NSW
- Mr Reynard Smith, Acting Chief Executive Officer, Transport Asset Holding Entity (TAHE) NSW.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Fiona Trussell, Chief Finance and Commercial Officer, Sydney Metro.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Paul Low, National Industry Leader, Infrastructure, Government and Healthcare, KPMG
- Mr Marcus McArdle, Risk Management Partner, Audit, KPMG.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4:47 pm.

4.5 Tendered documents

Resolved, on the motion by Mr Farlow: That the committee accept and publish the following documents tendered during the public hearing:

- Contract notice – Infrastructure NSW - Commercial Director for Projects NSW – INSW2057
- Contract notice – Transport for NSW - Project Management Services – 4200276524
- LinkedIn Profile – Bryan Tan

5. Adjournment

The committee adjourned at 4.49 pm until 9.00 am, Wednesday 6 September 2023 (ninth hearing – consulting services inquiry).

Peta Leemen

Committee Clerk

Minutes no. 14

Wednesday 6 September 2023

Public Accountability and Works Committee

Macquarie Room, Parliament House, Sydney, at 9.01 am.

1. Members present

Ms Boyd, *Chair*

Mr Farlow, *Deputy Chair* (participating from 4.35 pm)

Mr Buttigieg

Mr Fang (substituting for Mrs Taylor)

Dr Kaine

Mr Latham

Mr Primrose (until 10.22 am and from 1.45 pm)

Mrs Ward (substituting for Mr Farlow from 4.35 pm)

2. Correspondence

The committee noted the following items of correspondence:

Received

- 1 September 2023 – Letter from Mr Scott McLachlan, Chief Executive, Central Coast Local Health District, to the Chair, responding to potential adverse mention in Submission no. 26 from Unions NSW
- 4 September 2023 – Email and letter from Ms Heather Watson to the secretariat responding to potential adverse mention in Submission 5 (Emeritus Professor Guthrie et al), and requesting that the committee publish her response

- 5 September 2023 – Email from Ms Gloria Hill, Manager Strategic Coordination, Energy Co, to the secretariat, advising that Ms Alex Finley is unable to attend the public hearing on 6 September due to illness.

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of the following:

- Letter from Mr Scott McLachlan, Chief Executive, Central Coast Local Health District responding to potential adverse mention in Submission no. 26
- Letter from Ms Heather Watson responding to potential adverse mention in Submission no. 5.

3. Inquiry into NSW Government's use and management of consulting services

3.1 Declaration of interests

Mr Primrose made a declaration that his wife would be attending the public hearing as a witness for the Australian Services Union and that he would not be present for the duration of her evidence.

Mr Buttigieg made a declaration that his son works for the Australian Services Union.

3.2 Australian Paramedics Association (NSW) correspondence

Resolved, on the motion of Mr Buttigieg: That the secretariat contact the Australian Paramedics Association (NSW) and request that its correspondence received on 31 August 2022 be published as it is of a general nature, and does not contain sensitive information, rather than be kept confidential, as per request of the author.

3.3 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Professor Brendan Lyon, Faculty of Business and Law, University of Wollongong.

Professor Lyon tendered the following documents:

- Screenshots of WhatsApp messages dated 8 July 2023 between Professor Lyon and Mr James Copsey, KPMG.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Angus McFarland, Branch Secretary, Australian Services Union NSW & ACT (Services) Branch
- Ms Jan Primrose, Deputy Branch Secretary, Australian Services Union NSW & ACT (Services) Branch.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr David Deverall, Chief Executive, NSW Treasury Corporation (TCorp).

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Paul Plowman, General Manager, Asset Lifecycle, Sydney Water
- Ms Denisha Anbu, General Manager, Governance and Assurance, Sydney Water.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Darren Cleary, Managing Director, Hunter Water
- Ms Jennifer Hayes, Executive Manager Finance & Business Partner, Hunter Water.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr James Hay, Chief Executive, EnergyCo
- Mr Andrew Lewis, Acting Deputy Secretary, Energy, Climate Change and Sustainability.

The following witness was examined under his previous oath at this inquiry:

- Mr Shaun Smith, Chief Operating Officer, Department of Planning and Environment.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.33 pm.

3.4 Tendered documents

Resolved, on the motion of Mr Primrose: That the committee accept and publish the following document tendered during the public hearing:

- Screenshots of WhatsApp messages dated 8 July 2023 between Professor Lyon and Mr James Copsey, KPMG.

4. Inquiry into Appointments of Josh Murray to the position of Secretary of Transport for NSW and Emma Watts as NSW Cross-Border Assistant Commissioner

4.1 Draft minutes

Resolved, on the motion of Dr Kaine: That draft minutes nos. 11 and 12 be confirmed.

4.2 Public submission

The committee noted that the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 2.

4.3 Partially confidential submission

Resolved, on the motion of Mr Buttigieg: That the committee authorise the publication of submission no. 3 with the exception of identifying information and Parts A and C of the submission, as per the request of the author.

4.4 Confidential submission

Resolved, on the motion of Mr Buttigieg: That the committee keep confidential submission no. 1 confidential, as per the request of the author.

4.5 Additional hearing date

Resolved, on the motion of Mrs Ward: That the committee reserve 17 November 2023 as a potential hearing date, and inform the following witnesses that they may be required to attend the hearing and that the committee will confirm the hearing after Budget Estimates:

- Josh Murray, Secretary, Transport for NSW
- Kathrina Lo, Public Service Commissioner
- Dianne Leeson, Former Assistant Director General, Premier's Department
- Jim Betts, Secretary, Australian Department of Infrastructure, Transport and Regional Development (member of the assessment panel)
- Benedicte Colin, CEO, Transport Asset Holding Entity
- Howard Collins, Coordinator General, Transport for NSW.

4.6 Clerk's advice

The committee noted the Clerk's advice, dated 5 September 2023, regarding options the committee could pursue following Minister Jo Haylen's correspondence declining the committee's invitation to attend a hearing on Thursday 31 August 2023.

5. Adjournment

The committee adjourned at 4.52 pm until Friday 17 November 2023 (third hearing – appointments inquiry).

Peta Leemen
Committee Clerk

Minutes no. 15

3 October 2023

Public Accountability and Works Committee

Room 1136, Parliament House, Sydney, at 3.32 pm

1. Members present

Ms Boyd, Chair

Mr Buttigieg

Mrs Taylor (via videoconference)

Mr Latham (via videoconference)

Dr Kaine (via videoconference)

Ms Munro (substituting for Mr Farlow)

Mr Primrose

2. Apologies**3. Previous minutes**

Resolved, on the motion of Mr Buttigieg: That draft minutes no. 13 and 14 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 5 September 2023 – Email from Mr Alex Claassens, Branch Secretary, Rail, Tram and Bus Union (NSW Branch), to the secretariat, declining the invitation to appear at a public hearing on 6 September 2023
- 5 September 2023 – Email from Mr Ivan Mills, A/Manager, Government Relations, NSW Fire + Rescue, to the secretariat, advising it requires an extension of 15 days to return answers to certain supplementary questions to consult third parties as required by the GIPA Act
- 5 September 2023 – Email from Mr Gerald Jaworski to the secretariat providing further comment on the matters in his submission no. 22
- 7 September 2023 – Letter from an inquiry participant to the Chair regarding the use of consultants by Fire + Rescue NSW
- 13 September 2023 – Email from Mr Gary Wilson, APA (NSW), reiterating the request to keep his letter of 31 August 2023 confidential due to commercial sensitivity of the information
- 19 September 2023 – Letter from Mr David Deverall, Chief Executive, TCorp, to the Chair, providing a correction to evidence given at the hearing on 6 September 2023
- 19 September 2023 – Letter and attachments from Mr Leighton Drury, State Secretary, Fire Brigade Employees' Union, to the Chair, outlining FBEU concerns with answers to questions on notice provided by Fire + Rescue NSW
- 20 September 2023 – Letter from Mr Bill Browne, Director, Democracy and Accountability Program, The Australia Institute, to the Chair, making a correction to Submission no. 27
- 20 September 2023 – Letter from Ms Heather Watson to the Chair, responding to possible adverse mention in answers to questions on notice from Emeritus Professor James Guthrie et al
- 20 September 2023 – Letter from Ms Heather Watson to the Chair, responding to possible adverse mention in Submission no. 27
- 21 September 2023 – Letter from Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance, CA ANZ, to the Chair, responding to potential adverse mention in Submission no. 22
- 27 September 2023 – Letter from Ms Kathryn Danks, A/Executive Director, Office of the Commissioner, Fire and Rescue NSW, to the Chair, providing corrections to answers to supplementary questions received on 7 September 2023

- 28 September 2023 – Email from Mr Daniel Rindfleish, Government Relations Advisor, Sydney Water, to the secretariat requesting an extension to the deadline to return certain answers to certain supplementary questions due to the resources required to compile information.

Sent

- 6 September 2023 – Email from the secretariat to Mr Ivan Mills, Fire + Rescue NSW, noting the request for an extra 15 days to provide answers to supplementary question no. 2 from the 9 August hearing
- 7 September 2023 – Email from the secretariat to Mr Gary Wilson, APA (NSW) seeking agreement to publication of his letter dated 31 August 2023, which the committee had previously resolved to keep confidential
- 7 September 2023 – Email from the secretariat to Ms Vanessa Chapman, CA ANZ, seeking clarification of CA ANZ's confidentiality request regarding submission no. 22.

Resolved, on the motion of Ms Munro: That the committee keep the letter from an inquiry participant, received 7 September, confidential as per the request of the author, and that the author's name be redacted from minutes no.15.

Resolved on the motion of Mr Buttigieg: That the committee authorise:

- the publication of the letter from Mr David Deverall, received 19 September 2023, providing a correction to evidence given at the hearing on 6 September 2023
- the insertion of footnotes at the relevant points in the transcript of 6 September noting that correspondence clarifying the evidence had been received and providing a hyperlink to the published correspondence.

Resolved, on the motion of Mr Buttigieg: That the committee authorise publication of the following items of correspondence:

- Letter from Mr Bill Browne, received 20 September 2023, correcting an error in Submission no. 27 from The Australia Institute
- Letter from Ms Heather Watson, received 20 September 2023, responding to possible adverse mention in Submission no. 27
- Letter from Ms Heather Watson, received 20 September 2023, responding to possible adverse mention in answers to questions on notice from Emeritus Professor James Guthrie et al
- Letter from Ms Vanessa Chapman, CA ANZ, received 21 September 2023, responding to possible adverse mention in Submission no. 22
- Letter from Ms Katherine Danks, Fire and Rescue NSW, received 27 September 2023, providing corrections to answers to supplementary questions received on 7 September 2023.

5. Inquiry into the NSW Government's use and management of consultants

5.1 Partially confidential submission - Submission no. 22

Resolved, on the motion of Ms Munro: That the committee authorise the publication of Submission no. 22, with the exception of potential adverse mention which is to remain confidential, as per the recommendation of the secretariat.

5.2 Answers to questions on notice and supplementary questions

The following answers to questions on notice were published under the resolution establishing the committee:

- Health Services Union NSW received on 17 August 2023
- NSW Treasury (supplementary questions) received on 6 September 2023
- NSW Procurement (supplementary questions) received on 6 September 2023
- NSW Treasury (questions on notice) received on 6 September 2023
- Fire + Rescue NSW on 7 September 2023 and 11 September

- icare, received on 12 September 2023
- NSW Health, received on 13 September 2023
- SIRA (questions on notice) received on 13 September 2023
- SIRA (supplementary questions) received on 13 September 2023
- Public Service Association, received on 13 September 2023
- Deloitte, received on 13 September 2023

Resolved, on the motion of Mrs Taylor: That the committee keep answers to a question on notice and a supplementary question from Deloitte, received on 13 September 2023, confidential, as per the request of the author, as they contain identifying and/or sensitive information.

5.3 Transcript corrections

Resolved, on the motion of Mr Primrose: That the committee authorise the insertion of footnotes at the relevant points in the transcript of 9 August noting that correspondence clarifying the evidence had been received from Ms Nancy Milne, Chairman, Accounting Professional & Ethics Standards Board, and providing a hyperlink to the published correspondence.

6. Inquiry into the Parliamentary Evidence Amendment (Ministerial Accountability) Bill 2023

6.1 Terms of reference

Committee to note the following terms of reference referred by the House on 20 September 2023:

That:

- (a) The Parliamentary Evidence Amendment (Ministerial Accountability) Bill 2023 be referred to the Public Accountability and Works Committee for inquiry and report
- (b) The committee report by 27 November 2023.

6.2 Proposed timeline

Resolved, on the motion of Mrs Taylor: That the committee adopt the following timeline for the administration of the inquiry:

- Thursday 19 October – closing date for submissions
- Monday 23 October – public hearing
- Monday 6 November – answers to questions on notice due
- Thursday 16 November – Chair's draft report to committee
- Monday 20 November (after 1 pm) – report deliberative
- Monday 27 November – report tabled.

6.3 Stakeholder list

Resolved, on the motion of Mr Latham: That:

- the following stakeholders be invited to make a submission and/or give oral evidence to the inquiry:
 - Clerks of other Australian bicameral parliaments
 - Clerk of the Parliaments, NSW
 - Clerk of the NSW Legislative Assembly
 - Mr Bret Walker SC
 - Professor Anne Twomey
 - Professor Gabrielle Appleby
 - The NSW Cabinet Office
 - Mr John Evans (former clerk of the NSW Legislative Council)
- members have until **4pm Wednesday 4 October** to propose amendments or nominate additional stakeholders
- the committee agree to the stakeholder and witness list by email, unless a meeting of the committee is required to resolve any disagreement.

7. Adjournment

The committee adjourned at 3.46 pm, until Monday 23 October 2023 (time tbc, public hearing for the parliamentary evidence bill inquiry).

Peta Leemen

Committee Clerk

Minutes no. 16

Monday, 23 October 2023

Public Accountability and Works Committee

Via videoconference, 8.46 am

1. Members present

Ms Boyd, Chair

Mr Farlow, Deputy Chair

Mr D'Adam (substituting for Dr Kaine)

Mr Buttigieg (to 10.32 am)

Mr Latham (to 10.32 am)

Mr Primrose

Mr Tudehope (substituting for Mrs Taylor for the duration of the inquiry into the Parliamentary Evidence Amendment (Ministerial Accountability) Bill 2023)

2. Previous minutes

Resolved, on the motion of Mr Primrose: That draft minutes no. 15 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 25 September 2023 – Letter from Mr Josh Murray, Secretary, Transport for NSW, to committee, asking the committee to consider a number of matters regarding his appearance for the reserved hearing on Friday 17 November 2023, for the inquiry into appointments of Josh Murray to the position of Secretary of Transport for NSW and Emma Watts as NSW Cross-Border Assistant Commissioner
- 29 September 2023 – Email from Ms Gloria Hill, Manager Strategic Coordination, EnergyCo, to the secretariat, seeking an extension of time to provide answers to supplementary questions from hearing on 6 September 2023, for the inquiry into the NSW Government's use and management of consulting services
- 29 September 2023 – Email from Mr Gerald Jaworski to the secretariat, seeking an update on publication of his submission, for the inquiry into the NSW Government's use and management of consulting services
- 3 October 2023 – Email from Miss Deyi Wu, Office of the Opposition Whip, to the secretariat, advising that the Hon Damien Tudehope MLC will substitute for the Hon Bronnie Taylor MLC for the duration of the inquiry into the Parliamentary Evidence Amendment (Ministerial Responsibility) Bill 2023
- 4 October 2023 – Letter from Mr Darren Cleary, Managing Director, Hunter Water, to the Chair, requesting that the unredacted version of Attachment A to their answers to questions on notice be kept confidential, for the inquiry into the NSW Government's use and management of consulting services
- 4 October 2023 – Email from Ms Ali Nelson-Watt, Ministerial and Parliamentary Services, Infrastructure NSW, to the secretariat, providing clarifications to evidence given at the public hearing on 5 September 2023, for the inquiry into the NSW Government's use and management of consulting services
- 4 October 2023 – Letter from Mr Peter Perdikos, Executive Director Commercial, Procurement and Transformation, Transport for NSW, to the Chair, regarding the scope and timeframe for answering

supplementary questions 1 and 11 from the hearing on 5 September, for the inquiry into the NSW Government's use and management of consulting services

- 4 October 2023 – Email from Professor Gabrielle Appleby to the Chair advising her availability to give evidence at the hearing on 23 October, for the inquiry into the Parliamentary Evidence Amendment (Ministerial Responsibility) Bill 2023
- 5 October 2023 – Email from Mr Gerald Jaworski to the secretariat, regarding redactions made to his submission, for the inquiry into the NSW Government's use and management of consulting services
- 5 October 2023 – Email from Mr Mitch Dudley, Manager, Parliamentary Services, Transport for NSW, to the secretariat, regarding the scope and timeframe for answering supplementary questions 1 and 11 from the 5 September public hearing, for the inquiry into the NSW Government's use and management of consulting services
- 6 October 2023 – Email from Ms Caroline Davoren on behalf of Mr Bret Walker SC, to the secretariat, declining the invitation to give evidence at the hearing on 23 October, for the inquiry into the Parliamentary Evidence Amendment (Ministerial Responsibility) Bill 2023
- 8 October 2023 – Email from Mr Gerald Jaworski to the secretariat, regarding his submissions and redactions, also enclosing an email he provided to CAANZ, for the inquiry into the NSW Government's use and management of consulting services
- 9 October 2023 – Email from Mr Robert McDonald, Clerk, Legislative Council, Parliament of Victoria, to the Chair, declining the committee's invitation to give evidence, for the inquiry into the Parliamentary Evidence Amendment (Ministerial Responsibility) Bill 2023
- 9 October 2023 – Email from Ms Stephanie Hesford, Deputy Clerk, House of Assembly, Parliament of Tasmania, on behalf of the Clerk, to the secretariat, declining the committee's invitation to give evidence, for the inquiry into the Parliamentary Evidence Amendment (Ministerial Responsibility) Bill 2023
- 10 October 2023 – Email from Ms Gemma Namey, Principal Legal Officer, Legal Branch, The Cabinet Office, advising that the Cabinet Office has declined to attend the public hearing, for the inquiry into the Parliamentary Evidence Amendment (Ministerial Responsibility) Bill 2023
- 10 October 2023 – Email from Ms Jan Primrose, Deputy Secretary, Australian Services Union NSW & ACT (Services) Branch, to the secretariat, requesting the ASU's answers to questions on notice provided on 4 October be kept confidential, for the inquiry into the NSW Government's use and management of consulting services
- 11 October 2023 – Email from Mr Mitch Dudley, Manager, Parliamentary Services, Transport for NSW, to the secretariat, outlining a proposed scope and timeframe for answering supplementary questions 1 and 11 from the 5 September public hearing, for the inquiry into the NSW Government's use and management of consulting services
- 16 October 2023 – Email from the office of the Clerk of the Legislative Council, Western Australia, to the secretariat, advising that the Clerk, Mr Sam Hastings, is not available to participate in the committee's inquiry, for the inquiry into the Parliamentary Evidence Amendment (Ministerial Responsibility) Bill 2023
- 19 October 2023 – Email from Mr John Evans, former Clerk of the Parliaments, forwarding a submission and advising he is not available to give evidence at the hearing, for the inquiry into the Parliamentary Evidence Amendment (Ministerial Responsibility) Bill 2023.

Sent

- 4 October 2023 – Email from the secretariat to Mr Gerald Jaworski, advising that his submission had been published with redactions, and providing information on the Legislative Council's procedural fairness resolution, for the inquiry into the NSW Government's use and management of consulting services
- 11 October 2023 – Email from the secretariat to Mr Mitch Dudley, Manager, Parliamentary Services, Transport for NSW, agreeing to the proposed scope and timeframe for answering supplementary questions from the 5 September public hearing, for the inquiry into the NSW Government's use and management of consulting services.

Resolved, on the motion of Mr Primrose: That the committee authorise:

- the publication of the letter from Ms Ali Nelson-Watt, Infrastructure NSW, received on 4 October 2023, providing clarifications to evidence given at the public hearing on 5 September, for the inquiry into the NSW Government's use and management of consulting services
- the insertion of footnotes at the relevant points in the transcript of 5 September noting that correspondence clarifying the evidence had been received and providing a hyperlink to the published correspondence.

4. Inquiry into the NSW Government's use and management of consulting services

4.1 Answers to questions on notice and supplementary questions

The following answers to questions on notice were published under the resolution establishing the committee:

- TCorp, received 19 September 2023
- KPMG, received 4 October 2023
- Hunter Water (including Attachment A – public version), received 4 October 2023
- Infrastructure NSW, received 4 October 2023
- Sydney Metro, received 4 October 2023
- Transport for NSW, received 4 October 2023
- Transport Asset Holding Entity (TAHE) NSW (answers to questions on notice), received 4 October 2023
- Transport Asset Holding Entity (TAHE) NSW (answers to supplementary questions), received 4 October 2023

4.2 Confidential answers to questions on notice

Resolved, on the motion of Mr Latham: That the committee keep confidential the following documents as per the request of the authors:

- the unredacted version of 'Attachment A' to answers to questions on notice from Hunter Water, received 4 October 2023
- answers to questions on notice from the Australian Services Union, received 4 October 2023.

5. Inquiry into the Parliamentary Evidence Amendment (Ministerial Accountability) Bill

5.1 Public submissions

The following submissions were published under the resolution establishing the committee: Submissions no. 1-4.

5.2 Public hearing via videoconference

The witnesses were admitted via videolink.

The committee proceeded to take evidence in public.

The Chair made an opening statement regarding the broadcasting of proceedings, virtual hearing etiquette and other matters.

The following witnesses were sworn and examined:

- Mr David Blunt AM, Clerk of the Legislative Assembly and Clerk of the Parliaments
- Professor Gabrielle Appleby, UNSW Law and Justice.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 10.32 am.

Mr Buttigieg left the meeting.

Mr Latham left the meeting.

6. Inquiry into appointments of Josh Murray to the position of Secretary of Transport for NSW and Emma Watts as NSW Cross-Border Assistant Commissioner

6.1 Answers to questions on notice and supplementary questions

The following answers to questions on notice, supplementary questions and additional information were published under the resolution appointing the committee:

- Answers to questions on notice, Mr Chris Lamb, Deputy Commissioner, Public Service Commission, received on 22 September 2023
- Answers to questions on notice and additional information, Dr Marianne Broadbent, NGS Global, received on 23 September 2023
- Answers to supplementary questions, Ms Kate Boyd, The Cabinet Office, received on 27 September 2023
- Answers to supplementary questions, Mr Peter Duncan, Former Acting Secretary, Premier's Department received on 28 September 2023
- Answers to supplementary questions, Mr Scott Gartrell, Chief of Staff, Office of the Minister for Transport received on 28 September 2023
- Answers to supplementary questions and additional information, Ms Emma Watts, NSW Cross Border Assistant Commissioner, received on 29 September 2023
- Answers to questions on notice and supplementary questions, Mr James McTavish, Cross Border Commissioner, received on 29 September 2023
- Answers to questions on notice and supplementary questions, Mr Steve Orr, A/Secretary, Department of Regional NSW and Ms Julie-Anne Tooth, Chief People Officer, Department of Regional NSW, received on 29 September 2023
- Answers to supplementary questions and additional information, Mr Josh Murray, Secretary, Transport for NSW, received on 3 October 2023
- Answers to questions on notice, Mr Josh Murray, Secretary, Transport for NSW, received on 10 October 2023.

Resolved, on the motion of Mr Tudehope: That the committee authorise the publication of the answers to questions on notice and attachment to answers with the exception of the identifying information as per the request of the author and recommendation of the secretariat:

- Answers to questions on notice, Ms Emma Watts, NSW Cross Border Assistant Commissioner, received on 29 September 2023
- Attachment to answers, Mr James McTavish, NSW Cross Border Commissioner, received on 29 September 2023.

6.2 Publication status of the Clerk's advice

The committee noted that the Clerk's advice, dated 5 September 2023, regarding options the committee could pursue following Minister Jo Haylen's correspondence declining the committee's invitation to attend a hearing on Thursday 31 August 2023, was published as part of the Clerk's submission to the inquiry into the Parliamentary Evidence Amendment (Ministerial Accountability) Bill.

6.3 Witness list for public hearing on 17 November

The committee noted that the witness list for the committee's potential public hearing on 17 November would be resolved by email.

7. Adjournment

The committee adjourned at 10.36 am until Friday 17 November (public hearing, appointments inquiry)

Peta Leemen
Committee Clerk

Minutes no. 17

23 November 2023

Public Accountability and Works Committee

Macquarie Room, Parliament House, Sydney, at 1.34 pm.

1. Members present

Ms Boyd, *Chair*

Mr Farlow, *Deputy Chair*

Mr Buttigieg (from 1.39 pm)

Dr Kaine

Mr Primrose

Mr Tudehope (substituting for Mrs Taylor)

2. Apologies

Mr Latham

3. Previous minutes

Resolved, on the motion of Mr Farlow: That draft minutes no. 16 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 20 October 2023 – Email from Mr Daniel Rindfleish, Government Relations Advisor, Sydney Water, to the secretariat, requesting that the unredacted versions of question on notice 3 and supplementary question 1 from Sydney Water be kept confidential, for the inquiry into the NSW Government's management and use of consultants
- 20 October 2023 – Email from Ms Gloria Hill, Manager, Strategic Coordination, EnergyCo, to the secretariat, requesting a further extension of time to lodge answers to questions on notice from the hearing on 6 September 2023, for the inquiry into the NSW Government's management and use of consultants
- 22 October 2023 – Email from Ms Jan Primrose, Deputy Secretary, Australian Services Union NSW & ACT (Services) Branch, to the secretariat, providing answers to questions on notice, requesting that pp. 8 to 14 be kept confidential, and providing an update to evidence previously provided, for the inquiry into the NSW Government's management and use of consultants
- 24 October 2023 – Email from Ms Jan Primrose, Deputy Secretary, Australian Services Union NSW & ACT (Services) Branch, to the secretariat, thanking the committee for the consideration of their concerns, for the inquiry into the NSW Government's management and use of consultants
- 25 October 2023 – Email from Mr Gerald Jaworski, to the secretariat, providing further comments on CA ANZ, for the inquiry into the NSW Government's management and use of consultants
- 26 October 2023 – Letter from Mr Peter Perdikos, Executive Director Commercial, Procurement & Transformation, Corporate Services, Transport for NSW, to the Chair, requesting clarification of what the committee still requires in regard to supplementary question 1, given the substantial work for TfNSW staff to provide requesting information on engagements below \$150,000, for the inquiry into the NSW Government's management and use of consultants
- 21 November 2023 – Letter from Mr Richard Gwilym, Managing Partner, Scyne Advisory to the secretariat, providing an update on the operations of Scyne Advisory as an independent business, for the inquiry into the NSW Government's management and use of consultants.

Sent

- 1 November 2023 – Email from the secretariat to Mr Mitch Dudley, Transport for NSW, regarding a revised scope and timeframe for answering supplementary question 1, for the inquiry into the NSW Government's management and use of consultants.

5. Inquiry into the Parliamentary Evidence (Ministerial Accountability) Bill 2023

5.1 Answers to questions on notice

The following answers to questions on notice were published under the resolution appointing the committee:

- answers to questions on notice from Mr David Blunt AM, Clerk of the Parliaments, received 8 November 2023.

5.2 Publication of correspondence from appointments inquiry

Resolved, on the motion of Mr Farlow: That the committee authorise publication of the email from the office of the Hon Jo Haylen MP, Minister for Transport, declining to appear at a hearing for the inquiry into the appointments of Josh Murray to the position of Secretary of Transport for NSW and Emma Watts as NSW Cross-Border Assistant Commissioner, received on 30 August 2023.

5.3 Consideration of Chair's draft report

The Chair submitted her draft report entitled '*Parliamentary Evidence Amendment (Ministerial Accountability) Bill 2023*' which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Tudehope: That:

- The draft report be the report of the committee and that the committee present the report to the House;
- The transcript of evidence, submissions, answers to questions on notice, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished transcripts of evidence, submissions, and answers to questions on notice relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- Upon tabling, all unpublished correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee and subject to the redaction of identifying and/or sensitive information;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- The secretariat table the report at 3pm Monday 27 November.

6. Inquiry into the NSW Government's use and management of consultants

6.1 Answers to questions on notice and supplementary questions

The following answers to questions on notice were published under the resolution establishing the committee:

- Sydney Water, received 20 October 2023
- Energy Co, received 25 October 2023
- Transport for NSW (additional answers to supplementary questions), received 26 October 2023
- Transport for NSW (further additional answer to supplementary question), received 20 November 2023.

6.2 Confidential and partially confidential answers to questions on notice

Resolved, on the motion of Mr Farlow: That the committee keep confidential the unredacted versions of answers to question on notice 3 and supplementary question 1 from Sydney Water, received 20 October 2023, as per the author's request.

Resolved, on the motion of Mr Farlow: That the committee:

- keep confidential pages 8 to 14 of the answers to questions on notice from the Australian Services Union, received on 22 October 2022, at the request of the author; and
- authorise publication of the remainder of the document.

Resolved, on the motion of Mr Primrose: That the:

- answers to questions on notice and supplementary questions from Mr Brendan Lyon, received on 19 October 2023, be published, with the exception of the transcript of conversation at pages 44-47, which is to be kept confidential until the committee is able to reconsider publication in light of advice from the Clerk
- Chair write to KPMG to provide them with an opportunity to respond to the potential adverse mention (as highlighted on page 10) included in the answers to questions on notice and supplementary questions from Mr Brendan Lyon
- committee seek advice from the Clerk regarding the impact and appropriateness of publishing a transcript of a recorded conversation, including any obligations the committee may have in reporting a potential offence.

7. Inquiry into the appointments of Josh Murray to the position of Secretary of Transport for NSW and Emma Watts as NSW Cross-Border Assistant Commissioner, and Senior Executives and Department Liaison Officers in 2023

7.1 Amendment to Terms of Reference

The committee noted the following terms of reference, as amended, by the House on 22 November 2023:

1. That the Public Accountability and Works Committee inquire into and report on the appointments of Josh Murray to the position of Secretary of Transport for NSW and Emma Watts as NSW Cross-Border Assistant Commissioner, and Senior Executives and Department Liaison Officers in 2023, and in particular:

- the circumstances leading up to the appointments
- the process undertaken to make the appointments
- the probity and integrity measures that were undertaken as part of the appointments
- the principles, public expectations and requirements for appointments to the public service by Ministers
- the process for the appointment of senior officers generally
- the appointment, actions, duties and responsibilities of Department Liaison Officers seconded to ministerial offices
- the creation of transition offices in the Government
- other matters related to senior executive appointments at Transport for NSW, and
- any other related matters.

2. That the committee report by 20 May 2024.

7.2 Hearing dates

Resolved, on the motion of Mr Primrose: That the secretariat canvass member availability, in consultation with the Chair, for two hearing dates in February/March 2024.

8. Adjournment

The committee adjourned at 1.51 pm until 5 February 2024 (public hearing for consultants inquiry)

Peta Leemen

Committee Clerk

Minutes no. 18

Monday 5 February 2024

Public Accountability and Works Committee

Macquarie Room, Parliament House, Sydney, at 9.06 am

9. Members present

Ms Boyd, *Chair*

Mr Farlow, *Deputy Chair* (from 9.12 am)

Mr Buttigieg

Dr Kaine (from 9.19 am)(via videoconference until 10.05 am)

Ms Munro (substituting for Mrs Taylor)

10. Apologies

Mr Latham

Mr Primrose

11. Previous minutes

Resolved, on the motion of Mr Buttigieg: That draft minutes no. 17 be confirmed.

12. Correspondence

The committee noted the following items of correspondence:

Received

- 29 November 2023 – Correspondence from submission author no. 3, to committee, providing additional information, including a supplementary submission, regarding the appointment of Ms Emma Watts for the appointments inquiry
- 8 December 2023 – Letter from Ms Louise Capon, General Counsel, KPMG Australia, to Chair, responding to matters raised by Mr Brendan Lyon in his answers to questions on notice, regarding the consulting services inquiry
- 17 December 2023 – Email from Mr Andrew Nipe, Chief Consulting Officer, Australian Government Consulting, declining invitation to appear at hearing on 5 February 2024, regarding the consulting services inquiry
- 2 February 2024 – Email from Mr Shane Allison, Strategic Communications Director, EY, to secretariat, advising that Mr Christopher George is no longer available for the hearing on 5 February 2024, regarding the consulting services inquiry.

Sent

- 24 November 2023 – Letter from Chair, to Mr Andrew Yates, Chief Executive Officer, KPMG, providing an opportunity to respond to potential adverse mention in answers to questions on notice from Mr Brendan Lyon, regarding the consulting services inquiry.

The committee noted that correspondence from Ms Louise Capon, General Counsel, KPMG Australia to Chair, responding to matters raised by Mr Brendan Lyon in his answers to questions on notice, received 8 December 2023 was published by the committee clerk under the authorisation of the resolution appointing the committee.

13. Inquiry into appointments of Josh Murray to the position of Secretary of Transport for NSW and Emma Watts as NSW Cross-Border Assistant Commissioner, and Senior Executives and Department Liaison Officers in 2023

13.1 Answers to questions on notice and supplementary questions

The following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice, Mr Scott Gartrell, Chief of Staff, Office of the Minister for Transport received 30 October 2023.

13.2 Correspondence and supplementary submission from submission author no. 3.

Resolved, on the motion of Mr Buttigieg: That the committee:

- keep the email correspondence and attachments from submission author no. 3 to the committee providing additional information regarding the appointment of Ms Emma Watts, received on 29 November 2023, confidential, as per the request of the author
- keep the supplementary submission from submission author no. 3 providing additional information regarding the appointment of Ms Emma Watts, received on 29 November 2023, confidential as it contains potential adverse mention
- invite Ms Emma Watts to provide a written response in relation to the potential adverse mention contained in the supplementary submission from submission author no. 3, received on 29 November 2023, within two weeks of receiving the invitation
- reconsider the publication status of the supplementary submission from submission author no. 3, when a written response is received from Ms Watts.

14. Inquiry into the NSW Government's use and management of consulting services.

14.1 Clerks' advice – publication of transcript on pages 44-47 of Mr Brendan Lyon's answers to questions on notice

Resolved, on the motion of Ms Munro: That the committee:

- keep the Clerk's advice confidential
- keep confidential the transcript on pages 44-47 of the answers to questions on notice and supplementary questions received from Mr Brendan Lyon on 19 October 2023.

14.2 Public hearing

Witnesses, the public and the media were admitted at 9.18 am.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Adrian Loader, Founding Partner, Director, Allegro Funds, Scyne Advisory
- Mr Rich Gwilym, Managing Partner, Scyne Advisory
- Ms Diane Rutter, NSW Lead, Scyne Advisory.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mrs Catherine Friday, Government and Health Sciences Leader, EY Oceania
- Mr Mark Nixon, Government and Public Sector Lead, EY Oceania
- Mrs Leigh Walker, Oceania Risk and Independence Leader, EY Oceania
- Mr Christopher George, Public Policy Leader, EY Oceania.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 12.29 pm. The public and the media withdrew.

15. Adjournment

The committee adjourned at 12.30 pm until Monday 8 April 2024 (third hearing – appointments).

Talina Drabsch
Committee Clerk

Draft minutes no. 23

Tuesday 21 May 2024

Public Accountability and Works Committee

Room 1043, Parliament House, Sydney, 10.33 am

16. Members present

Ms Boyd, *Chair*

Mr Farlow, *Deputy Chair* (via videoconference)

Mr Buttigieg

Dr Kaine

Mr Latham (via videoconference)

Mr Primrose

Mrs Taylor

17. Correspondence

The committee noted the following items of correspondence:

Received

- 5 February 2024 – Email from Ellery Switches to secretariat, providing information about PwC
- 8 February 2024 – Letter from Ms Ainslie van Onselen, Chief Executive Officer, CA ANZ, to Chair, providing information about the CA ANZ roadmap to enhanced trust and accountability.

Resolved, on the motion of Dr Kaine: That the committee authorise the publication of correspondence from Ms Ainslie van Onselen, Chief Executive Officer, CA ANZ, providing information about the CA ANZ roadmap to enhanced trust and accountability, dated 7 February 2024.

18. Review into the Design and Building Practitioners Act 2020 and the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020.

The committee has previously resolved to conduct a Review into the *Design and Building Practitioners Act 2020* and the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

18.1 Proposed terms of reference

Resolved, on the motion of Mr Primrose:

1. That in accordance with section 109 of the *Design and Building Practitioners Act 2020* and section 69 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* the Public Accountability and Works Committee is to review both Acts:
 - (a) to consider the functions exercised or delegated by the Secretary, and
 - (b) to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain effective for securing those objectives, and
 - (c) to consider the desirability of establishing an independent NSW Building Commission to instead exercise the regulatory and oversight functions under this Act and other Acts relating to the construction of buildings.*
2. The review is to be undertaken as soon as possible after 30 March 2022.
3. A report on the outcome of the review is to be tabled in the Legislative Council by 30 June 2022 (or by a later day determined by the Committee).

4. The Minister is to table in the Legislative Council a written response to the report within 3 months after the tabling of the report.

* The committee notes that the Building Commission NSW was established as the regulator of the state's building and construction industry on 1 December 2023.

18.2 Proposed timeline

Resolved, on the motion of Mr Primrose: That the committee adopt the following timeline for the administration of the inquiry:

- Submissions close: 2 July 2024
- Hearings and/or briefing: July – August 2024
- Reporting: by 30 September 2024.

19. Inquiry into the NSW Government's use and management of consulting service

19.1 Correspondence from Ellery Switches regarding PwC

Resolved, on the motion of Mrs Taylor: That the committee keep the correspondence from Ellery Switches to secretariat, providing information about PwC, dated 5 February 2024, confidential, as it contains potential adverse mention.

19.2 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Adjunct Professor Mary Foley, received 20 July 2023
- answers to questions on notice from NSW Treasury, received 2 August 2023
- answers to questions on notice from Scyne Advisory, received 28 February 2024
- answers to questions on notice and supplementary questions from EY, received 4 March 2024.

19.3 Consideration of Chair's draft report

The Chair submitted her draft report entitled '*NSW Government's use and management of consulting services*', which, having been previously circulated, was taken as being read.

Chapter 2

Resolved, on the motion of Dr Kaine: That paragraph 2.83 be amended by omitting 'exemptions to the reporting requirements for consultant expenditure be removed' and inserting instead 'any exemptions from the requirement that agencies report on consultant expenditure are removed and government agencies previously exempt from disclosure of consultant expenditure be required to disclose its historical expenditure'.

Resolved, on the motion of Dr Kaine: That Recommendation 4 be amended by omitting 'on a short-term basis' and inserting instead 'for the shortest possible period to undertake the required work'.

Resolved, on the motion of Mr Latham: That Recommendation 4 be amended by:

- a) inserting 'and as a last resort, whereby departments and agencies need to actively demonstrate this 'last resort' necessity' after 'to undertake the required work'.
- b) inserting 'that is, work for which departments and agencies do not have their own inhouse capacity or immediate way of developing the skills and capacity consultants can bring' after 'not involved in core government work'.

Resolved, on the motion of Dr Kaine: That:

- a) paragraph 2.87 be amended by omitting 'The committee thus recommends that the NSW Procurement Board approve all consultant expenditure of more than \$150,000'.
- b) Recommendation 5 be omitted: 'That the NSW Procurement Board approve all consultant expenditure of more than \$150,000'.

Resolved, on the motion of Dr Kaine: That

a) paragraph 2.88 be amended by omitting 'the findings of any post-engagement evaluations' and inserting instead 'on an annual basis to provide details of any post-engagement evaluations'.

b) Recommendation 7 be amended by omitting 'providing details of any post-engagement' and inserting instead 'to provide details of any post-engagement'.

Resolved, on the motion of Mr Farlow: That Recommendation 6 be amended by omitting 'all engagements of consultants' and inserting instead 'substantial engagements of consultants'.

Resolved, on the motion of Mr Latham: That paragraph 2.89 be amended by inserting 'unless there is a valid reason involving Cabinet in confidence, commercial in confidence, and personal privacy' before 'the default position should be that all contracts are disclosed'.

Resolved, on the motion of Dr Kaine: That paragraph 2.89 be amended by:

a) omitting 'these reports, and the government reports based on them' and inserting instead 'reports prepared by consultants and the government reports based on them'.

b) omitting 'consultants used and relevant details of their engagement' and inserting instead 'consultancies used and relevant details of their engagement'.

Resolved, on the motion of Mr Farlow: That Finding 3 be amended by omitting 'is not fit for purpose and' before 'should be urgently redesigned to ensure timely, accessible and complete'.

Resolved, on the motion of Mr Farlow: That Recommendation 8 be omitted: 'That the NSW Government introduce a requirement that all contracts for the engagement of consultants be publicly disclosed'.

Resolved, on the motion of Dr Kaine: That Recommendation 10 be omitted: 'That the NSW Government require all government departments and agencies to table reports provided by consultants or consulting firms in NSW Parliament, within six months of delivery to the relevant department or agency'.

Resolved, on the motion of Dr Kaine: That Recommendation 11 be amended by omitting 'consultants were used, the amount they were paid' and inserting instead 'consultancies were used, the amount they were paid'.

Resolved, on the motion of Dr Kaine: That:

a) paragraph 2.90 be amended by omitting 'the Legislative Council amend the resolution' and inserting instead 'the Legislative Council consider amending the resolution'

b) paragraph 2.90 be amended by omitting 'at least once every two years' and inserting instead 'at least once every Parliamentary term'.

c) recommendation 12 be amended by omitting 'the Legislative Council amend the resolution' and inserting instead 'the Legislative Council consider amending the resolution'

d) recommendation 12 be amended by omitting 'at least once every two years' and inserting instead 'at least once every Parliamentary term'.

Mr Farlow moved: That:

a) paragraph 2.90 be omitted: 'Finally the committee, is persuaded that consultants who work for the public service should be held accountable for their work. To this end, we recommend that the Legislative Council consider amending the resolution establishing the Public Accountability and Works Committee to require the committee to conduct a review of consulting services, in relation to any work conducted for, or on behalf of, the NSW Government, at least once every Parliamentary term.'

b) Recommendation 12 be omitted: 'That the Legislative Council consider amending the resolution establishing the Public Accountability and Works Committee to require the committee to conduct a review of consulting services, in relation to any work conducted for, or on behalf of, the NSW Government at least once every Parliamentary term'.

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Latham, Mrs Taylor.

Noes: Ms Boyd, Mr Buttigieg, Dr Kaine, Mr Primrose.

Question resolved in the negative.

Chapter 3

Mr Farlow moved: That paragraph 3.54 be omitted: 'As discussed in Chapter 2, the committee is concerned that an over-reliance on the use of consultants over many years has essentially created a 'shadow public service'. We are alarmed that consultants have in some cases been used to complete core government work, or to prepare meeting agendas and minutes. It is essential that agencies do not default to the use of consultants but instead ensure that the use of consultants is strategic and for the purposes of obtaining necessary expertise'.

Question put.

Ayes: Mr Farlow, Mr Latham, Mrs Taylor.

Noes: Ms Boyd, Mr Buttigieg, Dr Kaine, Mr Primrose.

Question resolved in the negative.

Resolved, on the motion of Mr Latham: That the following new finding be inserted after paragraph 3.54:

Finding X

'In part, the overuse of consultants by departments and agencies is due to a lack of senior managerial oversight in the public sector. Inhouse managers obviously know their agencies better than anyone else but in pursuing strategic change, restructuring and difficult HR matters they often find it easier to bring in outside consultants to recommend changes that will upset their public sector workers with redundancies, staff reallocations and new resourcing priorities, rather than confront these issues themselves.'

Resolved, on the motion of Mr Farlow: That:

- a) paragraph 3.58 be amended by omitting 'that mandated periods of 'gardening leave' be introduced' and inserting instead 'that mandated periods be introduced'
- b) paragraph 3.58 be amended by omitting 'In recognition of the seriousness of this issue, we further recommend that all Ministers and government Members of Parliament also be prevented from being appointed in relevant industry and lobby groups within six months of leaving NSW Parliament' after 'within six months of leaving the public sector'
- c) Recommendation 13 be amended by omitting 'all Ministers and government Members of Parliament from being appointed in relevant industry and lobby groups within six months of leaving NSW Parliament' after 'within six months of leaving the public sector'.

Mr Farlow moved: That Finding 4 be omitted: 'The overuse and reliance on consultants and contractors by the NSW Government has occurred alongside a reduction in public sector skill and capacity. For the government to be effective in reducing its spend on consultants and contractors, it will need to simultaneously work to bolster the public sector'.

Question put and negated.

Resolved, on the motion of Dr Kaine: That:

- a) paragraph 3.60 be amended by omitting 'to report semi-annually on the number of contractors' and inserting instead 'to report annually on the number of contractors'
- b) Recommendation 14 be amended by omitting 'to report semi-annually on the number of contractors' and inserting instead 'to report annually on the number of contractors'.

Mr Farlow moved: That:

- a) paragraph 3.63 be amended by omitting 'and we recommend that the government investigate the feasibility of developing an in-house speciality consulting team, similar to that of the Australian Government' after 'we believe that this is an option worthy of further consideration,'
- b) Recommendation 17 be omitted: 'That the NSW Government investigate the feasibility of developing an in-house speciality consulting team, similar to that of the Australian Government'
- c) Recommendation 18 be amended by omitting 'as an interim measure prior to the establishing of an in-house speciality consulting team,' before 'allocate responsibility to an appropriate department'.

Question put.

The committee divided.

Ayes: Mr Farlow, Mrs Taylor.

Noes: Ms Boyd, Mr Buttigieg, Dr Kaine, Mr Latham, Mr Primrose.

Question resolved in the negative.

Resolved, on the motion of Mr Latham: That the following new finding be inserted after paragraph 3.61:

Finding X

'The work of Service NSW is a good model for handling consultants through short-term contracts in disciplines where it lacks expertise (such as advanced IT); it promptly replicates this expertise internally (learning from the consultancy service and then moves on. Service NSW has been an effective model for this approach'.

Chapter 4

Resolved, on the motion of Mrs Taylor: That the TAHE case study be amended by inserting 'The investigation into this matter has been limited as Mr Lyon has resigned from CA ANZ. In future, Mr Lyon could re-join to clear his name and rebuild his reputation' after 'He also suffered substantial reputational damage for his actions'.

Resolved, on the motion of Dr Kaine: That Recommendation 20 be amended by inserting ', not leave this to consultancies themselves to determine' after 'determine whether there is a conflict of interest'.

Mr Farlow moved: That:

- a) paragraph 4.56 be omitted:

'It is clear to the committee that it is not appropriate for a consulting firm to complete work in areas where it also acts as an auditor or has an ongoing client area. While there are already measures in place to discourage this, the committee believes a stronger stance is necessary, and recommends that the NSW Government act accordingly. We therefore recommend that the NSW Procurement Board amend the Performance Management and Services Scheme and other procurement policies and frameworks to prohibit consulting services from providing consulting work to government in spheres in which it also acts as an auditor, has an ongoing client in that area, or has worked in the previous 12 months, in any capacity, for a private sector client that could be affected by the results of the work being undertaken for the government.'

- b) Recommendation 21 be omitted:

'That the NSW Procurement Board amend the Performance Management and Services Scheme and other procurement policies and frameworks to prohibit consulting services from providing consulting work to government in spheres in which it also:

- acts as an auditor
- has an ongoing client in that area, or
- has worked in the previous 12 months, in any capacity, for a private sector client that could be affected by the results of the work being undertaken for the government.'

Question put.

Ayes: Mr Farlow, Mr Latham, Mrs Taylor.

Noes: Ms Boyd, Mr Buttigieg, Dr Kaine, Mr Primrose.

Question resolved in the negative.

Resolved, on the motion of Mr Latham: That paragraph 4.58 be amended by omitting 'presence of current and former consultants' and inserting instead 'presence of current and immediate past consultants'.

Mr Farlow moved: That paragraph 4.58 be omitted:

'The committee is alarmed by the significant presence of current and immediate past consultants on government boards and committees, especially those of local health districts. We acknowledge that a breadth of experience and expertise is of benefit to the purposes of a board, and that there are some measures in place to deal with conflicts of interest. Nonetheless, we are of the view that these measures can fail to recognise some of the more intangible benefits gained by those consultancies with representation on such boards.'

Question put.

The committee divided.

Ayes: Mr Farlow, Mrs Taylor.

Noes: Ms Boyd, Mr Buttigieg, Dr Kaine, Mr Latham, Mr Primrose.

Question resolved in the negative.

Mr Farlow moved: That paragraph 4.59 be omitted:

'The committee strongly agrees with the suggestion of the Centre for Public Integrity that a fully transparent appointment process is needed in New South Wales. In addition, it is clear that it is inappropriate for those who are currently consultants or who have a financial interest in a consulting firm to serve on public sector boards. We therefore recommend that the NSW Government ensure consultants are not appointed, and that they can only serve as observers or mentors with full disclosure and following ministerial approval.'

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Latham, Mrs Taylor.

Noes: Ms Boyd, Mr Buttigieg, Dr Kaine, Mr Primrose.

Questions resolved in the negative.

Mr Farlow moved:

That recommendation 23 be omitted:

'That the NSW Government ensure current consultants and those with a continuing financial interest in a consulting firm:

- are deemed ineligible for appointment to a public sector board
- can only act as observers or mentors on public sector boards, or as advisors to senior executives within agencies, only with ministerial approval and full disclosure in relevant annual reports.'

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Latham, Mrs Taylor.

Noes: Ms Boyd, Mr Buttigieg, Dr Kaine, Mr Primrose.

Question resolved in the negative.

Resolved, on the motion of Dr Kaine: That:

- a) paragraph 4.61 be omitted: 'To prevent consultancies from financially relying on work with a particular government agency and the associated risk of their tempering advice in order to maintain this relationship, the committee is of the view that enforced breaks in government engagements may be necessary. We accordingly recommend that the NSW Procurement Board ensure that, once every four years, each consulting firm is excluded from government work for 12 months'
- b) Recommendation 24 be omitted: 'That the NSW Procurement Board ensure that, once every four years, each consulting firm is excluded from government work for 12 months'.

Mr Farlow moved: That paragraphs 4.62 to 4.64 be omitted:

'The committee recognises that the structure of Scyne Advisory is a marked improvement on those of the major consulting firms. While we appreciate its commitment to embedding higher standards and expectations, as well as the greater independence of its board, we are not fully convinced of the benefit to be gained from a consultancy that solely completes work for the public sector. We remain convinced that the ideal is to build this expertise within the public service itself.

Further, the need to set up a business that only does government work strongly suggests that an inherent conflict of interest remains in those consulting firms who continue to complete work for both public and private sector clients.

Nonetheless, the committee is pleased that alternative options are being considered. However, we would suggest that the NSW Government give consideration to the gains that could be had by embracing greater use of academic expertise as appropriate.'

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Latham, Mrs Taylor.

Noes: Ms Boyd, Mr Buttigieg, Dr Kaine, Mr Primrose.

Questions resolved in the negative.

Chapter 5

Resolved, on the motion of Dr Kaine: That:

- a) paragraph 5.68 be amended by omitting 'In addition, we recommend that the NSW Government introduce a greater range of escalating penalties for consultants who behave unethically. These could range from the termination of the contract, removal from the supply panel, debarment from work with the NSW Government for a specified period, among other things. However, penalties that are less severe than terminating a contract may also be warranted, including referral to a relevant professional body. Further, there should be a record of any breach of procurement guidelines which should be disclosed together with the action taken in response' and inserting instead:

'In addition, we recommend that the NSW Government introduce a greater range of escalating sanctions for consultants who behave unethically. These could range from the termination of the contract, removal from the supply panel, debarment from work with the NSW Government for a specified period, among other things. However, sanctions that are less severe than terminating a contract may also be warranted, including referral to a relevant professional body. Further, there should be a record of any instance of a material breach by a consultant or consultancy that would undermine the public confidence or integrity in the NSW Procurement Framework, along with a record of any action taken to address the breach.'

- b) Recommendation 27 be amended by omitting 'greater range of escalating penalties for consultants' and inserting instead 'greater range of escalating sanctions for consultants'

c) Recommendation 28 be amended by omitting 'all instances where procurement guidelines have been breached, along with a record of any action taken to rectify the breach' and inserting instead 'any instance of a material breach by a consultant or consultancy that would undermine the public confidence or integrity in the NSW Procurement Framework, along with a record of any action taken to address the breach'.

Mr Farlow moved: That:

a) paragraph 5.70 be omitted: 'In addition, we further recommend that the Public Accountability and Works Committee be empowered to require the attendance of any consulting firms who benefit from the Professional Standards Act 1994 at hearings in future.'

b) Recommendation 30 be omitted: 'That the Legislative Council amend the resolution establishing the Public Accountability and Works Committee to require the attendance at future hearings of any consultants and consultancies who benefit from the Professional Standards Act 1997.'

Question put.

Ayes: Mr Farlow, Mr Latham, Mrs Taylor.

Noes: Ms Boyd, Mr Buttigieg, Dr Kaine, Mr Primrose.

Questions resolved in the negative.

Resolved, on the motion of Dr Kaine: That Recommendation 30 be amended by omitting 'benefit from the *Professional Standards Act 1997*' and inserting instead 'benefit from the *Professional Standards Act 1994*'.

Mr Farlow moved: That:

a) paragraph 5.71 be omitted: 'It is clear to the committee that the large consulting firms are, in practice, akin to 'pseudo-corporations'. We are of the view that it is only appropriate that they are taxed accordingly and recommend that the NSW Treasurer advocate to federal counterparts that consulting firms not be excluded from paying company tax. We also recommend that the NSW Government introduce legislation to amend the Payroll Tax Act 2007 to require large consulting firms to pay payroll tax on partnership earnings.'

b) Recommendation 32 be omitted: 'That the NSW Government introduce legislation to amend the Payroll Tax Act 2007 to require large consulting firms to pay payroll tax on partnership earnings.'

Question put.

Ayes: Mr Farlow, Mr Latham, Mrs Taylor.

Noes: Ms Boyd, Mr Buttigieg, Dr Kaine, Mr Primrose.

Questions resolved in the negative.

Mr Farlow moved: That Recommendation 31 be omitted: 'That the NSW Treasurer advocate to federal counterparts that consulting firms not be excluded from the requirement to company tax'

Ayes: Mr Farlow, Mrs Taylor.

Noes: Ms Boyd, Mr Buttigieg, Dr Kaine, Mr Latham, Mr Primrose.

Questions resolved in the negative.

Resolved, on the motion of Dr Kaine: That a glossary be added to the draft report.

Resolved, on the motion of Dr Kaine: That:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of draft minutes of the meeting;

The secretariat is tabling the report at 10.30 am Wednesday 29 May 2024;

The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

20. Adjournment

The committee adjourned at 11.45 am, *sine die*.

Talina Drabsch
Committee Clerk

