

**Submission
No 10**

INQUIRY INTO NSW GOVERNMENT'S USE AND MANAGEMENT OF CONSULTING SERVICES

Organisation: Per Capita Australia

Date Received: 17 July 2023

SUBMISSION TO NSW PUBLIC ACCOUNTABILITY AND WORKS COMMITTEE - INQUIRY INTO NSW GOVERNMENT'S USE AND MANAGEMENT OF CONSULTING SERVICES.

Per Capita
July 2023

Per Capita welcomes the opportunity to provide this submission to the Public Accountability and Works Committee for their *Inquiry into the New South Wales Government's Use and Management of Consulting Services*.

Per Capita is an independent think tank, dedicated to fighting inequality in Australia. We work to build a new vision for Australia, based on fairness, shared prosperity, and social justice.

Each year, Australian governments, both state and federal, allocate billions of taxpayer dollars towards hiring external contractors and consultants. Per Capita has recently provided a submission to the federal Senate Finance and Public Administration References Committee for its *Inquiry into the Management and Assurance of Integrity by Consulting Services*. The concerns we highlighted in our submission to the Senate are just as relevant to state governments. These are issues related to transparency, accountability, and integrity, along with the substantial financial and social implications that arise as a result.

Introduction

All Australians rely on public services. From the time that we are born until the day that we die, all citizens benefit from services traditionally designed, funded and delivered by state and federal government agencies, and staffed by public sector personnel.

Public servants are the 'human machinery'¹ of government and play a crucial role in facilitating the government's constitutional obligations.² Their impartiality and professionalism are vital to the efficacy of responsible government, and thus are bound by special, and sometimes onerous, ethical obligations to act in the public interest.³

The NSW Auditor General's recent report into government agencies' use of consultants reveals \$1 billion in spending on consultants between 2017 and 2022.⁴ In this period approximately 27% of the total consultant expenditure from government agencies went to just four prominent firms: KPMG, PwC, Ernst and Young, and Deloitte. Over this period, NSW government agencies reported spending approximately \$72 million on consulting services from KPMG, \$70 million on services from Ernst & Young, \$57 million on services from PwC, and \$42 million on services conducted by Deloitte.⁵

The PwC tax scandal revealed over the past couple of months has exposed how highly unethical behaviour and a self-serving culture can thrive in an environment where transparency and accountability are lacking. The ultimate losers are members of the public.

¹ *McManus v Scott-Charlton* (1996) 140 ALR 625, 633 (Finn J).

² *Ibid.*

³ Stephen Ranieri and Craig Stevens, 'The Ethical Obligations on Public Sector Employees: When Private Is Not So Private' (2021) 33(3) *Australian Journal of Labour Law* 254.

⁴ Audit Office of New South Wales, *NSW Government Agencies' Use of Consultants* (Report, 2 March 2023).

⁵ *Ibid.*

Unlike the NSW public sector, with its strict ethical guidelines that require employees to place the public interest over any personal interests,⁶ no such obligations exist for external consultants. They are private companies, and their chief imperative is to generate profit. Even where they are performing tasks that aim to benefit the public, they are primarily accountable to the interests of their shareholders: they have no obligations to act in the interests of the public.

There may be some legitimate reasons to engage private consultants, but the overreliance on private consultants who operate in an environment requiring less accountability and transparency than their counterparts in the NSW public service damages public trust in government.

The public has a right to ask why so much taxpayer money, in direct payments and foregone taxation revenue, is being swallowed up by these big advisory firms. We have a right to ask why it is going to the shareholders of private companies as profits or dividends and used to pay high executive salaries, especially when this money would otherwise be retained in government revenue to pay for public services.

The Australian people might have a right to ask, but they don't have a right to know.

Transparency and Accountability deficit

A fundamental principle of the rule of law is the requirement for governments to be transparent and accountable when making decisions. This is crucial so that individuals can comprehend the rationale behind decisions and anticipate the potential effects of future decisions. While the spending within NSW government agencies is subject to rigorous oversight and full transparency through the Parliament's budget estimates process, the same oversight is not applicable to private companies. While transparency and accountability are both core values and legislated requirements of the NSW public sector,⁷ no such statutory requirement exists for private consulting firms. Government contracts with private companies for policy advice and service delivery too 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.

In NSW every individual has a legally enforceable right to access government-held documents, subject only to restrictions that are reasonably necessary for the proper administration of Government.⁸ This enhances accountability and facilitates better administration and decision-making. In contrast, there is no general legal right to access documents in the possession of a private sector body. Understandably, this takes account of the fact that private sector bodies do not exercise the executive power of governments, nor do they have the same duty to act in the best interests of the community. But the increased blurring between the public and private sectors raises issues with this traditional rationale for restricting the application of the *FOI Act* to government agencies and departments.⁹

A conflict of interest?

The independence of public sector employees charged with assessing policy options is vital for ensuring the integrity of advice to any government. Thus, leaders (managers and executives) in the NSW public sector have

⁶ *Government Sector Employment Act 2013* (NSW) s 7(d)

⁷ *Ibid* s 7.

⁸ *Freedom of Information Act 1989* (NSW) s 5(2)(b).

⁹ See issue as discussed in relation to the Commonwealth's *FOI act* in Australian Law Reform Commission, *Open Government – A Review of the Federal Freedom of Information Act 1982* (Report No. 77, 20 January 1996) [1.2].

a responsibility to '[e]nsure that any real or perceived conflicts of interests are avoided or effectively managed'.¹⁰

If this impartial and independent source of advice is replaced with advice from private companies who may benefit financially from individual policy decisions, the public cannot have faith that the policies implemented on their behalf are in their best interests, rather than the vested interests of private advisory firms and their private sector clients.

It is concerning that the big four consulting firms are among the biggest donors to major political parties. It is not unreasonable that the public may infer from the \$850,000 donated by the big four to the two major parties in the last financial year, that they are buying contracts.¹¹

Conclusion

Private consultants have a role to play in supporting government and the public service, but the overreliance on private consultants coupled with lack of transparency and accountability is damaging the public service and public trust in government.

To address these concerns, there are a number of actions that may be taken. These could include implementing a debarment regime, to exclude consultants who have committed serious misconduct or been convicted of a criminal offence from providing services to the government;¹² extending the *FOI Act* to include private sector bodies in some circumstances; and implementing political donation restrictions on firms eligible for contracts to provide services or functions to the public on behalf of the government.

But the most critical reform needed is to invest in a strong and independent public service. The percentage of employed people in NSW working in the public service declined steadily between 2013 and 2018, and while it recovered slightly during the pandemic, it is again declining now.¹³

Around Australia, many people are struggling with an increasing cost of living and, following years of a global pandemic, we've never needed a strong public service more. Australians deserve to know that the public services they rely on are being delivered efficiently, with best value for taxpayers' money, and without conflicts of interest that could compromise policy and service delivery.

It is comforting that the NSW Government has followed the lead of the Commonwealth Government in holding this important inquiry. Per Capita looks forward to the outcome of this inquiry and thanks the members of the Public Accountability and Works Committee for their consideration of this submission.

¹⁰ Public Service Commissioner Direction No 2 of 2022;

¹¹ Denham Sadler, 'Big Four Consultancies, Which Get \$1.5B in Government Contracts, Donated \$850K to Labor and Libs Last Year' Crikey (Online, 8 February 2023) <<https://www.crikey.com.au/2023/02/08/big-four-consultancies-government-contracts-political-donations/>>.

¹² This was a recommendation (Rec 15) 15 in Australian Law Reform Commission, *Corporate Criminal Responsibility* (Report No. 136, 31 August 2020) 362-66. There is international precedent for the use of debarment regimes to deter corporate crime and protect the public interest: Government of Canada, Ineligibility and Suspension Policy (4 April 2016); Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement and Repealing Directive 2004/18/EC [2014] OJ L 94/65; Federal Acquisition Regulation (US) 48 CFR § 9400 (2020); World Bank, Procurement Regulations for Investment Project Financing Borrowers (2nd rev ed, August 2018).

¹³ NSW Public Service Commission, *2021 Workforce Profile Report* (Report, 2021).