

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

Organisation: EY
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EY

**Building a better
working world**

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17 July 2023

Public Accountability and Works Committee
Parliament House
Macquarie Street
Sydney NSW 2000

Via email: PAWC@parliament.nsw.gov.au

Dear Committee Secretary,

EY welcomes the opportunity to provide a submission to the Public Accountability and Works Committee's inquiry into NSW Government's use and management of consulting services.

The inquiry is an important opportunity to examine the safeguards and mechanisms in place to protect the interests of the NSW Government when engaging with external service providers, including consultants.

EY supports greater transparency in government contracting across Commonwealth and State jurisdictions, and has shared this support publicly in a variety of forums, including during the Federal Joint Committee on Parliamentary Accounts and Audit's Inquiry based on Auditor-General's Report No.19 (2017-18) and in the Federal Senate Standing Committee on Finance and Public Administration's Inquiry into management and assurance of integrity by consulting services.

Our submission draws on this work to make five recommendations to support the more effective procurement and management of service providers by the NSW Government, and we are confident that these actionable suggestions will enhance the transparency and accountability of this procurement.

Please do not hesitate to contact us if we can provide any further assistance to the inquiry.

Regards,

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EY Oceania Government and Public
Sector Consulting Leader

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Leader

NSW Consulting Services Inquiry Submission

17 July 2023



Table of Contents

Table of Contents	3
Introduction	4
About EY	4
Our services	4
Our approach	5
EY's response to the Terms of Reference	7
Summary of Recommendations	7
Term of Reference A: the setting and enforcement of procurement policies	8
Term of Reference B: the transparency of work undertaken by consultants, and the accountability of consultants for this work	9
Term of Reference C: the adequacy of agency classification, reporting on and disclosure requirements for the use of consultants	10
Term of Reference D: whether consultants are being used strategically and in a way that delivers value for money	11
Term of Reference E: the management of and measures to prevent conflicts of interest, breaches of contract or any other unethical behaviour,	12
Training	13
Accountability	13
Potential conflicts	13
Identifying Conflicts of Interest	14
Managing Conflicts of Interest	15
Disclosure and Consent Letter	15
Team Separation	16
Exclusivity agreements	16
The NSW Government's approach	16
Measures to prevent Conflicts of Interest	17
Measures to prevent breach of contract	17
Measures to prevent other unethical behaviour by consultants	18
Term of Reference 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	19
Term of Reference G: integrity and transparency obligations of NSW Government agencies in relation to their use of consultants	20
Term of Reference H: the use of 'consultant shopping' and the poor public policy outcomes that have arisen from such practices	21
Term of Reference I: enforcement actions that have been taken previously, and the adequacy of existing legislation to support integrity agencies to investigate and enforce penalties	22
Term of Reference J: the process and timing for releasing reports unfavourable to government policy priorities and initiatives	23

Introduction

About EY

EY is a global multidisciplinary professional services firm. Our purpose is to build a better working world for our people, our clients and our communities; and the insights and quality services we deliver help build trust and confidence in the capital markets and our institutions and we employ over 9,000 Australians.

We believe a better working world is one where economic growth is sustainable and inclusive. We work continuously to improve the quality of all our services by investing in our people, our clients and innovation for ourselves and across all sectors. We are proud of our work with clients and our engagement with stakeholders across Australia and around the world, using our knowledge, skills and experience to help fulfil our purpose and create positive change.

Our values are the fundamental beliefs of our organisation. They guide our actions and behaviours, influence the ways in which we work with each other, and steer the ways in which we serve our clients and engage with our communities.

These values inform the decisions and actions that each one of us makes every day; decisions that directly affect the way we experience each other, as well as the way our clients and wider communities experience us.

Our Global Code of Conduct is a clear set of ethical business conduct standards that build upon our purpose, values and culture to provide the ethical and behavioural framework on which we provide services to our clients and base our decisions every day.

The code is anchored in our values and beliefs and is embedded in our policies and procedures.

Our procedures, training and compliance approach gives us confidence that we are applying the same principles to help us make these decisions throughout our organisation.

Our services

We support a range of organisations across the economy with audit, tax, consulting services, and as commercial advisors through market segments as varied as finance, mining, government, education, retail and telecommunications.

Through the delivery of these specialist services, we help clients improve their service delivery, their management of risk and to build trust and confidence in their operations. In responding to these needs, we draw on our broad network of specialists in areas such as taxation, commercial strategy, digital capability, assurance, security, cyber and data.

We know that as an organisation, EY can make the biggest contribution to our communities when we use the distinctive services and competencies we have developed to help address society's toughest challenges.

Some of society's toughest challenges are in enabling governments to provide better service delivery to citizens. Our global reach, including work with other federal and state governments, as well as our work with private sector clients, means we are uniquely positioned to leverage our expertise to help governments confront these challenges.

Our values

We are people:

- ▶ Who demonstrate integrity, respect and teaming.
- ▶ Have the energy, enthusiasm and courage to lead.
- ▶ Who build relationships based on doing the right thing.

EY is regularly engaged by NSW government agencies for the specialist knowledge and the skills of our staff, expertise which enables these agencies to deliver best-in-class products and services to residents of the state.

These areas of expertise require different skill sets, technologies and capabilities to those that exist within government agencies and departments, or which are required to meet probity standards on complex transactions (for example, where EY is appointed as an independent Commercial and Financial Advisor for a large government project).

EY takes a collaborative approach to our work with the public sector, where appropriate, building mechanisms to enable the transfer of skills and expertise that helps to build capability that lasts long beyond the impact of a single project or deliverable.

This capability building extends across borders, with our teams in Australia drawing on experts from EY's offices across the globe to deliver best-in-class capabilities to NSW Government agencies.

Through this we deliver on our promise of Building a Better Working World by ensuring that citizens are able to access best-in-class services across Australia.

Our approach

We are committed to delivering exceptional quality services and maintaining professional integrity at all times.

These fundamental principles are contained in the EY Global Code of Conduct, the EY Values and form a key component of our strategy, performance management systems, client service mindset, policies, training and internal communications.

These fundamental principles:

- Implement the relevant professional standards, such as the APES 110 Code of Ethics for Professional Accountants issued by the Australian Professional and Ethical Standards Board
- Assist compliance with regulatory and relevant legislative requirements
- Provide a Quality Management System framework for the establishment and review of Quality objectives
- Support the continual improvement and effectiveness of the Quality Management System
- Satisfy client and stakeholder expectations

EY was one of the first professional services firms to be certified under the Quality Standard ISO 9001, having obtained it in 1994, and we proudly continue to hold that certification today.

Our policies implement the relevant professional standard, the APES 110 Code of Ethics, and quality standards of our profession, covering:

- Client acceptance and continuance
- Professional independence
- Conflicts of Interest
- Confidentiality, insider trading and access to working papers
- Personnel policies
- Supervision and review
- Quality of working papers
- Technical referral and consultation
- Quality assurance reviews (both internal and external)
- Physical and digital security

EY maintains a comprehensive quality control approach. To drive the effective implementation of key policies our partners and people complete formal declarations and undergo stringent review processes.

As an ongoing measure of quality every EY partner across our global network is subject to regular quality reviews performed by senior executives independent from the engagement subject to review. Our engagement leaders and/or our offices are also subject to regular reviews as required by our ISO certification, either by our internal Quality Review Teams or the ISO9001 external reviewers. These reviews focus on monitoring compliance with policies and procedures.

EY's response to the Terms of Reference

In responding to the Terms of Reference, we offer five recommendations for consideration, that would potentially improve procurement transparency and the management of Conflicts of Interest.

These five are list below and are detailed with the relevant Term of Reference.

Summary of Recommendations

Recommendation 1: Mandate the use of whole of government panels, when they exist, for procurement	8
Recommendation 2: Develop and implement a centralised data collection platform to report publicly on the outcome of all tendering processes in NSW, including contract extensions.....	9
Recommendation 3: Require buyers of services to publish short term strategic procurement outlooks and annual procurement plans	9
Recommendation 4: Develop a consistent set of codes to identify the type of services provided by consultants and require the use of these in reporting.....	10
Recommendation 5: Require public disclosure of the management of Conflicts of Interest by NSW Government agencies.	15

Term of Reference A: the setting and enforcement of procurement policies

NSW Procurement, a division of NSW Treasury, provides detailed procurement frameworks and guidance to NSW Government agencies to use when conducting procurement, including for procuring consultants.

The majority of contracts that EY undertakes are tendered through the Performance and Management Services Scheme, a whole of government scheme managed by NSW Treasury, with a panel of over 3500 diverse suppliers that are prequalified to supply professional services to the NSW Government.

EY's experience is that through this scheme we receive transparent and regular updates from NSW Treasury's procurement team. This includes regular reporting on our performance under the scheme, including the total value of contracts awarded, as well as the regular post-engagement feedback from agencies.

However, use of whole of government panels, when they exist, are not mandatory across NSW government agencies. This can result in individual agencies standing up a panel when a whole of government panel has already been formed via another department.

This can result in duplication of effort by suppliers and buyers of services, and reduce the efficiencies gained via whole of government procurement schemes.

The NSW government may want to consider mandating the use of whole of government panels, which would likely result in further cost savings across procurement and delivery for agencies.

It would also encourage agencies to work with existing panels to address any perceived deficiencies in these panels, ensuring that any learnings or improvements are shared across all users of the panels.

Recommendation 1: Mandate the use of whole of government panels, when they exist, for procurement

Despite this opportunity to improve procurement in NSW, EY believes that generally, the setting of NSW procurement policies results in good outcomes for the NSW Government, value for money and appropriate selection of suppliers.

It would be inappropriate for EY to comment on the enforcement of procurement policies as a supplier to the NSW Government.

Term of Reference B: the transparency of work undertaken by consultants, and the accountability of consultants for this work

When EY is engaged by a NSW Government agency, we are contracted to, and accountable for our work to that agency.

As the Auditor-General outlined in the March 2023 Performance Audit *NSW government agencies' use of consultants*, procurement data on consultants is spread across four different sources of data: *"the State's financial consolidation system (Prime), disclosures of spending on consultants in agency annual reports, and two systems operated by NSW Procurement (the Business Advisory Services (BAS) dashboard and Spend Cube). Each of these data sources serves a different purpose, and collects and categorises information differently. None of these provide a complete source of data on spending on consultants, either in their own right or collectively."*¹

EY believes that there exists an opportunity to streamline the collection and reporting of data on the procurement of professional services in NSW.

The implementation of centralised data collection on the procurement of professional services in NSW would be a natural extension of Recommendation 1 and is closely tied to Recommendation 4.

This 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.

Recommendation 2: Develop and implement a centralised data collection platform to report publicly on the outcome of all tendering processes in NSW, including contract extensions

Further to recommendation 2, EY believes that the NSW parliament may want to direct the NSW Procurement Board to require NSW Government agencies to publish short term strategic procurement outlooks and annual procurement plans.

Publication of strategic procurement outlooks and annual procurement plans will also provide additional confidence that buyers of services are using these appropriately, introduce more discipline in procurement processes and allow for the market to prepare for upcoming tenders.

This will also mitigate risks arising when an entity frequently uses preferred suppliers or provides significant extensions to work without going to Tender.

Recommendation 3: Require buyers of services to publish short term strategic procurement outlooks and annual procurement plans

¹ March 2023 Performance Audit *NSW government agencies' use of consultants (Page 1)*

Term of Reference C: the adequacy of agency classification, reporting on and disclosure requirements for the use of consultants

Further to our response to Term of Reference B, classification, reporting and disclosure of the use of consultancies is varied across NSW Government agencies. As the Auditor-General has reported, *'agencies were not interpreting the definition of consultant consistently, either within or across agencies.'*²

The NSW Parliament may want to consider examining how a central classification system could improve confidence in the use of external resources and increase the transparency of these arrangements through developing a set of consistent spending groups, or codes, for tracking government spending.

For example, Buy NSW uses international procurement agreements Central Product Classification codes from the United Nations Statistics Division to classify advisory services³, however, the Standard Commercial Framework for PMS Scheme categories 1-12 uses 12 different engagement types and 6 high level groupings to classify services⁴.

A set of consistent codes would give greater detail on the specific skills and capabilities provided by service providers, and would greatly enhance transparency around the use of service providers by the NSW Government.

These standard classification codes, together with Recommendations 1 and 2, would enable more accurate whole of NSW Government reporting on these engagements. However, in the absence of the implementation of these recommendations, the codes would provide greater post-procurement analysis of data sets from NSW Government agencies annual reports or the Prime system, and reporting on categories of spend by entity and supplier, across the whole of government

As an example, consistent service codes are used internally by EY in our Service Offering Reference Tool (SORT), which classifies all service codes, facilitating the management of conflicts of interest, our legislated independence requirements as well as our internal reporting.

Recommendation 4: Develop a consistent set of codes to identify the type of services provided by consultants and require the use of these in reporting

² March 2023 Performance Audit NSW government agencies' use of consultants (Page 4)

³ <https://info.buy.nsw.gov.au/resources/definition-of-a-consultant#4>

⁴ https://info.buy.nsw.gov.au/_data/assets/pdf_file/0009/589050/PMS-Overview-of-Standard-Commercial-Framework-2022.pdf

Term of Reference D: whether consultants are being used strategically and in a way that delivers value for money

As the services that EY provides to NSW Government agencies are specialised professional services which require the specialist knowledge and the skills of our staff, we believe that the engagement of professional services providers for this work is appropriate, and strategic.

Importantly, Labour Hire is not part of EY's model.

This is because we provide significantly different skill sets and capabilities to those that exist today within government agencies and departments, or which need to be embedded semi-permanently in our clients.

We are also engaged when NSW government agencies are required to meet probity standards on complex transactions (for example, where EY is appointed as an independent Commercial and Financial Advisor for a large government project).

EY takes a collaborative approach to our work with the public sector, where appropriate, building mechanisms to enable the transfer of skills and expertise that helps to build capability that lasts long beyond the impact of a single project or deliverable. This is outlined further in our response to Term of Reference F.

As outlined in our response to Term of Reference B and Recommendation 3, the publication of short-term strategic procurement plans and annual procurement plans would increase the strategic rigour that underpins the effective use of consultants.

The majority of work that EY undertakes with NSW Government agencies is won through a rigorous competitive tender process. We believe that this is an effective procurement method for engaging external service providers, ensuring that these engagements deliver value for money for the NSW Government.

However, the adoptions of Recommendations 1, 2 and 3 would increase confidence that NSW Government agencies are using consultants appropriately and that these engagements deliver value for money.

Term of Reference E: the management of and measures to prevent conflicts of interest, breaches of contract or any other unethical behaviour,

EY is committed to the effective management of Conflicts of Interest while delivering services to our clients, a commitment that is codified in our comprehensive processes, policies and procedures.

The management of Conflicts of Interest is a core part of our EY professionals' regular training and enforced by our internal client and engagement acceptance systems and processes and periodic quality review processes.

We are regularly asked to document our approach to the management of Conflicts of Interest by clients, and NSW Government agencies will ask for EY to provide declarations as to potential Conflicts of Interest during the engagement process.

Our policies

Our policies and procedures are drawn from the International Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (IESBA).

The Australian equivalent professional standard, APES 110 Code of Ethics for Professional Accountants, is issued by the Accounting Professional and Ethical Standards Board (APESB).

In Australia, our partners as Members of the Chartered Accountants Australia and New Zealand (CAANZ) must adhere to the APES 110 Code of Ethics and a failure to do so could result in disciplinary proceedings.

The APES 110 Code of Ethics establishes five fundamental principles of ethics to be complied with by all members. These fundamental principles are integrity, objectivity, confidentiality, professional competence and due care, and professional behaviour.

The APES 110 Code of Ethics also includes a conceptual framework that sets out the approach to be taken to identify, evaluate, and address threats to compliance with those fundamental principles.

Upholding the fundamental principles and compliance with the specific requirements of the APES 110 Code of Ethics enables EY as an organisation, and EY professionals as individuals, to effectively identify and manage Conflicts of Interest.

Global Code of Conduct and Conflicts of Interest Global Policy

Compliance with the APES 110 Code of Ethics is embedded in the EY Global Code of Conduct. All EY professionals must comply with this Global Code of Conduct regardless of their role and position, and attest annually to their compliance, reinforcing the critical role of compliance in our organisation.

EY's Conflicts of Interest Global Policy provides specific guidance to enable compliance with the Global Code of Conduct. Our policy implements the standards contained in Section 310 (Conflicts of Interest) of the APES 110 Code of Ethics to ensure that EY does not allow a Conflict of Interest to compromise our professional or business judgement. This policy also forms the basis of EY procedures in relation to the identification, documentation, escalation and management of conflicts of interest at EY.

Under the Conflicts of Interest Global Policy, the primary responsibility for identifying and managing Conflicts of Interest sits with our Engagement Leaders.

Engagement Leaders use the requirements of our Conflicts of Interest Global Policy and procedures which enact these standards, to identify and manage transactional, relational, advocacy, competitive and personal Conflicts of Interest.

The Policy sets out our processes, which are drawn from the APES 110 Code of Ethics, to identify and manage Conflicts of Interest to reduce the threat to our objectivity to an acceptable level.

We often decline client engagements due to the existence of conflicts of interest.

Training

At EY, we seek to equip our people with the right tools and skills to anticipate the capabilities they will need in the future and to embody our comprehensive processes, policies and procedures. We offer a three-part approach to personal and professional development: learning opportunities, stimulating work experiences and transformational coaching.

In Oceania, this involved 282,380 hours of total learning in the 2022 Financial Year, over a full week of learning per full-time employee.

This training includes mandatory Conflicts of Interest Web Based Learning for all employees on commencement with EY. Engagement leaders, including partners, associate partners and senior managers, are also required to complete dedicated conflicts training every two years as part of a comprehensive engagement leaders' course.

Accountability

EY has a performance management framework that connects our people's career, development and performance.

Adherence to EY's comprehensive policies and procedures to maintain our integrity through effectively managing Conflicts of Interest is mandatory for all staff, and there are strict penalties for non-compliance.

Engagement Leaders are responsible for ensuring that they are effectively identifying and managing Conflicts of Interests as they arise during an engagement, and they face serious financial penalties for breaches for non-compliance.

This accountability is built into our annual partner evaluation process, as these specifically include an annual assessment against an approved framework for Quality and Effective Risk Management metrics (Q&ERM) performance evaluation.

Quality, risk and ethical breaches such as inadequate management of a conflict of interest or other unethical behaviour can result in consequences and sanctions to EY partners. Depending on the nature and severity on the breach, consequences include disciplinary actions, performance evaluation downgrades, financial penalties (a percentage of the partner's income), and exit of the partnership. In our most recent Value Realised Report, we disclosed that in the 2022 Financial Year, three per cent of our partners did not meet the high expectations of our quality and risk management framework and a range of disciplinary action was taken, which is outlined on page 18.

Potential conflicts

The conflicts identified in EY's Conflict of Interest Global Policy may arise in scenarios where we are engaged with NSW Government agencies and EY is:

1. Asked to provide services to a client who is receiving funding (grants or revenue) from a NSW Government agency engaging EY to provide advice on the funding program.
2. Asked to provide services to a client who is seeking to bid on the NSW Government agency's procurement project on which EY has been appointed to provide advice.
3. Asked to provide services to a private sector client who is seeking to engage in a transaction with a NSW Government agency on which EY has been appointed to provide advice.

Personal conflicts may arise where an EY professional has:

1. A personal financial interest in the outcome of a NSW Government contracting process or transaction.
2. Family relationships in the NSW Government agency, or has previously worked for the NSW Government agency, and would be perceived to have confidential information that could be used by that person in service of another client.
3. Been provided with confidential information in relation to a NSW Government agency and is approached by a private sector client to provide services in relation to the area of policy development or regulatory oversight overseen by the NSW Government agency.
4. Where an EY professional has been provided with confidential information in relation to a NSW Government agency and is approached by another EY professional to utilise that information in relation to another client.

While the responsibility for managing Conflicts of Interest to an acceptable level sits with the Engagement Leader, EY's comprehensive processes, policies and procedures help identify and raise potential Conflicts of Interest before they arise so they can be managed appropriately.

Identifying Conflicts of Interest

Engagement Leaders are alerted to a Conflict of Interest through the requirements of our Conflicts of Interest Policy being embedded in our intranet based global client and engagement acceptance system, the Process for Acceptance of Clients and Engagements (PACE).

Our Client and Engagement Acceptance Global Policy establishes a rigorous process for evaluating risk and making decisions to accept or continue working with a client or on specific engagements.

It mandates consultation with designated professionals in cases where there is a higher likelihood of a potential Conflict of Interest. All these requirements are built into PACE to coordinate client and engagement acceptance and continuance activities in line with our policies and professional standards, and ensure a Conflict Check is completed where required.

As PACE is a global tool, it allows EY to identify conflicts that may arise with engagements not only in Australia, but those undertaken by all EY member firms within the Global EY network.

The Engagement Leader must also ensure that conflict checks are updated for new developments during an engagement, including where additional counterparties are identified.

Once a conflict check has been submitted in PACE, our dedicated Conflicts Team will examine EY's dedicated internal database, as well as external data sources to determine whether the services to be provided and/or existing client relationships may give rise to a conflict.

In performing the assessment, our Conflicts Team will consider the nature of the services being provided to the different clients, together with confidential consultations with counterparty Global Client Service Partners, where required, to identify any overlap of the services that could trigger a self-review threat or threat to our objectivity.

Confidential consultations with the counterparty's Global Client Service Partners, via our Conflicts team, are undertaken on a no names, not to be disclosed to their client basis. This ensures that no confidential information is inadvertently transmitted to the counterparty through the Conflict Check process.

Engagement Leaders are also required to assess for personal Conflicts of Interest in the Engagement Team. Individual team members on a client engagement must declare potential conflicts to their Engagement Leader for evaluation, who will then consult with the Conflicts Team and/or Service Line Quality teams where appropriate. This requirement is embedded into EY's Standards of Professional Behaviour policy which requires that EY professionals must at all times avoid situations which do or have the potential to give rise to a conflict of interest.

Put simply, this means avoiding situations where personal interests conflict with those of the firm, those of clients, other staff members, or other people to whom the professional owes an obligation through work or their engagement. This includes conflicts related to financial interests, employment or business relationships with the client or the counterparty, access to confidential information of, or prior work related to the matter, for the counterparty.

Managing Conflicts of Interest

When a Conflict of Interest is identified, the APES 110 Code of Ethics and our Conflicts of Interest Global Policy require appropriate safeguards to be applied to eliminate threats to objectivity or reduce them to an acceptable level in order to undertake a client engagement.

The safeguards implemented are designed to cover both firm and personal conflicts.

The Engagement Leader is responsible for ensuring that safeguards have been appropriately resolved and the resolution documented in PACE prior to commencing or continuing the client work. When a threat of actual or potential conflict cannot be resolved satisfactorily through these safeguards, the engagement team will cease the activity or engagement which is causing the conflict.

This process currently takes place directly between the NSW Government agency and EY, with no public disclosure of the outcome. While EY is confident that this process, and the safeguards from the APES 110 Code of Ethics and our policies to manage these are effective at managing conflicts of interest, the NSW Parliament may want to consider measures which can strengthen the public perception of this management.

One measure could be a requirement for NSW Government agencies to establish and maintain a Conflicts of Interest disclosure log, which publicly discloses potential Conflicts of Interest and how the tenderer has managed these Conflicts of Interest.

Appropriate safeguards would be required to protect the confidential information of the NSW Government, supplier and other private sector entities or individuals involved in this disclosure.

Recommendation 5: Require public disclosure of the management of Conflicts of Interest by NSW Government agencies.

The typical conflict management safeguards identified in the APES 110 Code of Ethics and implemented by EY are explained in further detail below:

Disclosure and Consent Letter

In circumstances where a conflict is identified in relation to the provision of a service to one client that could pose a conflict with a service provided to another client, Disclosure and Consent letters are used to obtain specific consent from both parties to the conflict. The purpose of the Disclosure

and Consent Letter is to set out the nature of the conflict and seek consent around the safeguards that are being implemented, enabling us to continue to act for both parties.

For personal conflicts, it is the responsibility of the Engagement Leader to determine whether the potential Conflicts of Interest of a team member pose a threat to the individual's objectivity. In most cases, individual team members are excluded from the engagement where a personal Conflict of Interest has been identified. Alternatively, the Engagement Leader may consider disclosure to the client and seek their consent via a Disclosure and Consent letter.

Team Separation

Separation of engagement teams is a core safeguard identified within the APES 110 Code of Ethics to manage a Conflict of Interest and comply with the fundamental principle of confidentiality as per Subsection R114 of the APES 110 Code of Ethics.

Team separation requires that information barriers are implemented, including measures to prevent the exchange of confidential and sensitive information between separate client teams. The Engagement Leader is responsible for ensuring compliance with team separation protocols, which include, among other things, physical and electronic restrictions on access to confidential information and the obligation of team members not to discuss engagement details with any individuals outside the engagement team without the prior express consent of all clients involved.

The following are examples of typical measures included in team separation procedures:

- Discussion – discussions and telephone calls regarding the engagement are held in secure locations.
- Restricted access to documentation – electronic information is stored on a restricted access file/folder.
- Confidential project room – in certain circumstances, engagement teams are required to perform all work from a project room.

For larger projects, engagement teams are required to prepare a memorandum setting out the specific separation requirements, such as specifying the restricted drives, project name and project rooms where required. All team members are required to sign the memorandum to evidence that they understand the protocols and confirm compliance.

Exclusivity agreements

Recognising that certain engagements have a higher level of sensitivity and risk profile given the nature of the work involved, EY works closely with all our clients to understand any specific requirements with respect to conflicts and confidentiality.

For commercially sensitive engagements, it is not uncommon for NSW Government agencies to request exclusivity such that if EY acts for the NSW Government agency for a particular project, then we are unable to provide services to any counterparties in relation to that project. If we agree to the exclusivity arrangement, our conflicts system would be immediately updated and should another engagement team submit a conflict check to provide services to a counterparty to the specified project, that team will be informed to decline the counterparty work.

The NSW Government's approach

NSW Government agencies appropriately rely on external service providers to identify, communicate and effectively manage any conflicts of interest that may arise during an engagement.

The NSW Government will frequently appoint independent probity advisors to monitor the service provider's management of conflicts of interest, or directly query the service provider.

Measures to prevent Conflicts of Interest

During the tendering process, EY is routinely asked to provide details about our approach to managing Conflicts of Interest as part of our response to a Request for Quotation. Buyers of services will ask for EY to explain in detail our processes and procedures for identifying, managing and communicating any actual or perceived Conflicts of Interest during an engagement.

This is a common and accepted requirement that has been in place for many years, at all levels of the public service. Depending on the scope, nature and size of the project, the agency may appoint a probity advisor to work with tenderers during the process.

During the tendering process, public services employees are subject to their own Conflict of Interest requirements, with each agency issuing its own policies and procedures to define, identify and manage potential situations which could give rise to a Conflict of Interest.

When engaging suppliers, NSW Government agencies may seek a commitment through statutory declarations relating to the management and disclosure of professional and personal Conflicts of Interest that could arise through the engagement, which is monitored through a probity plan if we are engaged. The declaration regarding our personnel will often extend to the declaration of interests of spouses, or other close relatives. EY may also be required to continue making this declaration throughout an engagement, especially where EY is involved in supporting a tendering process or where the engagement extends over multiple years.

The primary responsibility within a NSW Government agency for the assurance of service provider's management of Conflicts of Interest is through the appointment of a Probity Advisor, appointed by the New South Wales Government as part of the probity plan for the project. It is common for EY and other service providers to be subject to probity checks which assess our implementation of measures to manage and prevent Conflicts of Interest that EY has agreed too contractually.

It is EY's experience that these frameworks, reinforced by the powerful presence of ICAC, are effective in protecting the interests of the NSW Government from inadequate management of Conflicts of Interest, both during the tendering processes and the execution of projects.

Measures to prevent breach of contract

The primary measure to prevent a breach of contract by the NSW Government is the strength of the contract itself and enforcement provisions available to the NSW Government as a contracting entity.

As an example, the NSW Treasury administers the Performance and Management Services Scheme (PMS), a whole of government scheme pursuant to which professional services may be provided to the NSW Government. The standard form of agreement within the PMS Scheme Rules⁵ specify:

- A right for the relevant Government agency to terminate the agreement for any substantial breach of the agreement (which in certain circumstances may extend to a breach of confidentiality, privacy or security obligations, including data security and unauthorised access to confidential information).
- Providers are required to provide an undertaking as at the date of a relevant agreement that no conflict of interest exists or is likely to arise in the performance of the services. To the extent a government agency reasonably forms the view that any disclosed conflict of interest cannot be appropriately managed, it has the power to terminate the agreement.

⁵ <https://info.buy.nsw.gov.au/schemes/pms>

The NSW Government has a template Confidentiality Deed for consultants engaged under the PMS Scheme. The template deed sets out remedies relating to a breach, which would extend to the misuse of confidential information. These remedies allow the relevant NSW government agency to enforce its rights by seeking specific performance or injunction proceedings. These provisions apply to service providers such as EY (including its officers and employees) that have contracted with the NSW Government.

In our experience, the civil remedy measures employed by the NSW Government are effective at preventing a breach of contract. In any event, EY takes its contractual obligations seriously and has rigorous systems and processes in place to ensure compliance.

Measures to prevent other unethical behaviour by consultants

The prevention of other unethical behaviour by external service providers sits with individuals and their employing organisations.

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.

In the 2022 Financial Year, EY publicly disclosed in our Value Realised report that from 64 misconduct and disciplinary complaints across Oceania, we identified 55 breaches of our policies, and seven breaches of our values by EY professionals.

In response a range of disciplinary action was undertaken including:

- Informal management conversations
- Facilitated conversations
- Verbal warning
- Written warning
- Financial sanctions
- Withholding of promotion
- Termination of employment

Term of Reference 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

Where appropriate, EY takes a collaborative approach to our work with the public sector, transferring skills and expertise that helps to build capability that lasts long beyond the impact of a single project or deliverable. Our most successful knowledge transfer engagements in the public sector include:

- Working in co-located integrated teams, developing or leveraging frameworks and procedures to maintain practices co-developed during the engagement
- Proactively providing the agency with insights and industry knowledge
- Providing hands-on coaching and shadowing and the handover of tools and other artefacts

Our engagement teams work at NSW government agencies' offices and within integrated teams.

Knowledge transfer occurs both formally (through training, sharing methodologies and working styles) and informally through interpersonal interactions. The effectiveness of knowledge transfer relies heavily on management support from the agency and clearly defined handover points during, and following the completion of, our consultancy work.

We pride ourselves on the ability to do this well and this is confirmed through client feedback gained from our post-engagement interviews as part of our quality assurance process.

A recent example of the effectiveness of this approach was the implementation of the Virtual Health strategy for the South-Eastern Sydney Local Health District.

After being appointed through a competitive process, EY stood up a project team to guide and support the project across Virtual Health model(s) design, change management, benefits quantification and governance development. To enable the ongoing sustainability of the work beyond EY's engagement, knowledge transfer and skills uplift were an underpinning feature of the project from the outset.

This collaborative and capability building approach was underpinned by fortnightly meetings with EY's global Virtual health team, enabling the sharing of insights from international subject matter experts, reflective and iterative design workshops to identify and incorporate lessons learned, and bring in global leading practice into future planning.

EY was also able to provide regular access to EY's global digital health leader, as well as other clients who had already undertaken a Virtual Health transformation, ensuring that global best practice was integrated from the beginning of the project.

**Term of Reference G: integrity and transparency obligations of
NSW Government agencies in relation to their use of consultants**

We would refer the Committee to recommendations 1-5 of our submission for measures to increase the transparency of the use of consultants by NSW Government agencies.

Term of Reference H: the use of 'consultant shopping' and the poor public policy outcomes that have arisen from such practices

EY is unable to comment on the use of 'consultant shopping' as a seller of services to the NSW Government.

However, we would note that we would not respond to any Requests for Quotation that are seeking a pre-determined outcome or recommendation.

Term of Reference I: enforcement actions that have been taken previously, and the adequacy of existing legislation to support integrity agencies to investigate and enforce penalties

We always abide by our contractual requirements, as breaches of civil contracts provide for serious financial penalties, including uncapped liability for breaches, and note again that ICAC is a powerful deterrent to unethical behaviour by buyers and sellers of services in NSW.

EY's approach to enforcement of the management of Conflicts of Interest and disciplinary actions for unethical behaviour are described in our response to Term of Reference E.

We believe it is inappropriate to make any further general comment in this submission on the enforcement measures that the NSW Government takes against private sector providers.

Term of Reference J: the process and timing for releasing reports unfavourable to government policy priorities and initiatives

EY is contracted by NSW Government agencies and it is the responsibility of the agency to manage the release of our work products.

However, we would note that most reports in NSW are accessible via Freedom of Information requests and document requests from the NSW Legislative Council.