

Supplementary
Submission
No 21a

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

Name: Emeritus Professor Bob Walker and Dr Betty Con Walker

Date Received: 7 August 2023

**Supplementary Submission to Legislative Council
Public Accountability and Works Committee
on
NSW GOVERNMENT'S USE AND MANAGEMENT OF CONSULTING SERVICES**

Emeritus Professor Bob Walker and Dr Betty Con Walker
August 2023

CONTENTS

1. THE POTENTIAL ROLE OF PROFESSIONAL BODIES IN MONITORING CONSULTANTS	1
2. IMPACT OF SPENDING ON CONSULTANTS AND CONTRACTORS ON THE SIZE OF NSW PUBLIC SECTOR WORKFORCE	4
3. IMPROVING THE CAPABILITY OF THE PUBLIC SECTOR	7

SUPPLEMENTARY SUBMISSION TO INQUIRY ON

NSW GOVERNMENT'S USE AND MANAGEMENT OF CONSULTING SERVICES

Following a number of questions raised by the Committee during its recent hearings, we provide some additional information in order to assist it in its deliberations.

1. THE POTENTIAL ROLE OF PROFESSIONAL BODIES IN MONITORING CONSULTANTS: A CASE STUDY

Following a number of questions raised by the Committee on the potential role that the professional bodies may play in monitoring and disciplining consultants, we thought it would be useful to briefly document our experience in bringing a complaint to the accounting professional body, CPA Australia.

We present this as a case study of how a professional body dealt with a very detailed complaint relating to a matter of public interest.

In September 2013, a report was issued by a 'committee' styled an 'Independent Costings Review Panel'. The Panel was engaged by the Liberal Party to review the costings of the Coalition's election promises – and, purportedly, to sprinkle holy water on the Coalition's election costings. The Panel's brief four paragraph report was published just before that year's federal election.

One member of the Panel, Len Scanlan, was identified as a former Auditor-General of Queensland, and his qualifications were listed as including membership of CPA Australia.

We were concerned that this report breached explicit requirements of the accounting profession's standards on a matter of public interest on the eve of a federal election.

The following chronology provides an insight into the processes of CPA Australia in handling this complaint.

- **24 March 2014:** We complained to the Chief Executive of CPA Australia (Mr Alex Malley) that the report of which Mr Scanlan was a joint author failed to comply with both ASAE 3000 *Review of a Financial Report Performed by an Assurance Practitioner who is not the Auditor of the Entity* (2007) and ASAE 3450 *Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information* (2012).

A 10-page statement was provided detailing particulars of fundamental breaches of these standards.

- **1 April 2014:** Despite the very detailed documentation we forwarded, the first response received dated 1 April 2014 was a letter from

the General Manager Professional Conduct, asking us to complete a 'Complaint Form' before the matter could be considered. We did this on **10 April 2014**.

- **11 August 2014:** Having heard nothing further, Dr Con Walker tried to call [redacted] unsuccessfully and left a message. At 4.51pm on that date, we received an email from [redacted] apologising for the delay in responding to our complaint and stating that the matter was ongoing and that she would be in touch shortly with further information. We responded in part as follows:

We are concerned that it is now nearing five months since we first lodged the complaint. Does it usually take this long for CPA Australia to deal with complaints regarding professional misconduct and matters of public interest?

Please advise what stage the process has reached in responding to the complaint. For example, have you received a response from your member? When will we be provided with a copy of that response? Has the matter been referred to the relevant disciplinary committee?

- **12 August:** [redacted] replied in part as follows:

I advise I will be forwarding the Member's response to you for your perusal and comment, prior to the matter proceeding to the General Manager Professional Conduct for adjudication.

- **7 October 2014:** Having heard nothing further, we again wrote to Mr Malley requesting his intervention to expedite the assessment of the complaint.
- **20 October 2014:** We received a letter from a [redacted] (responding to our 7 October 14 letter) containing a number of vague statements without explanation including that 'some investigations have not been completed expeditiously due to various factors outside of our control'.

In addition, contrary to their own By-Laws, we were advised that Mr Scanlan had **prohibited** CPA Australia from providing his response to us.

The relevant By-Law does not empower a member subject to a complaint to 'prohibit' CPA Australia from providing his or her response to a complainant.

While we were advised that the matter will 'now be reviewed by an independent audit expert', no information was provided as to the timing of this exercise.

- **30 October 2014:** We again wrote to Mr Malley summarising the above and repeating our concern that members of the profession act **in the public interest** and that was why we were keen for the matter to be expedited so that actions contrary to the public interest were not repeated by the named or any other CPA Australia member.
- **December 2014:** Some 10 months after our complaint - we received a letter advising that CPA Australia CEO, Alex Malley, 'has assessed that Mr Scanlan has a case to answer' and 'has referred the matter to a Disciplinary Tribunal'

and that the matter was 'tentatively set down to be heard in the first quarter of 2015'.

- **2 July 2015 – 16 months after our March 2014 complaint** – we received a letter of that date stating in part:

Complaint Outcome

I advise that your complaint about Mr Leonard Scanlan was heard on 25 May 2015 by the Disciplinary Tribunal.

The Tribunal reviewed all the material from your Complaint and the subsequent investigation and a determination was made.

In addition, the Tribunal determined that the Member's name would not be published on CPA Australia's website.

Incredibly, the letter did not provide any details of the outcome, so we had to search the CPA website – the only hint we had was the date of the Tribunal hearing. We may be overly suspicious but, conveniently, to make things appear normal, the CPA also decided not to disclose the names of the people involved in the two cases previous to this one – that was after publishing the names of the people involved in the previous 19 people in 2015.

The decision read in part:

The Disciplinary Tribunal found the Complaint sustained and imposed the penalty of an admonishment.

It also included the vague statement that a member had breached Article 39(a)(ii)(A) of CPA Australia's Constitution – without any mention of the substance of our very detailed complaint.

It appears that CPA Australia tried hard to avoid dealing with our complaint. **The process took 16 months since it was sent in March 2014 and CPA Australia had not followed all their published processes.** For example, contrary to its by-laws, we were not even provided with a copy of Mr Scanlan's response to our complaint.

We pursued this complaint because of our belief that a member of the accounting profession should comply with professional standards – particularly in a report dealing with public finances that was released only days before a national election.

So much for the claims by CPA Australia that the primary responsibility of the accounting profession is to act 'in the public interest'. What's the point of admonishing Mr Scanlan in a darkened room – and not publicly? Perhaps this only illuminates then-CEO Alex Malley's claim on his website that he 'always does what he believes in'.

On the basis of our experience, we wonder how effective oversight of consultants by a professional body behaving in the manner of the CPA Australia would be.

This experience contradicts suggestions that there are robust systems in place to deal with complaints about the conduct of members of the accounting profession. For example, the submission from the Institute of Chartered Accountants Australia and New Zealand dated 17 July 2023 stated:

Investigation and enforcement prioritisation may result in the prioritisation of investigations involving imminent harm or risk to consumers. (p.10, para 30)

We agree a concern with ‘consumers’ is laudable, but suggest it is unduly restrictive.

The case study we present above involved how a complaint to another body (CPA Australia) was handled. This concerned the dissemination in 2013 of a widely-publicised report about government finances, two days before a federal election – a report ***intended to influence the public at large***. With a delay of 16 months, our complaint was hardly ‘prioritised’. We note that a submission from the Accounting Professional & Ethical Standards Board (17 July 2023) explains that it has no role in ‘monitoring and enforcing compliance of professional accountants’ (p. 2) – but it then asserts

APESB is not aware of empirical evidence to suggest that there are significant weaknesses concerning the mandatory requirements in our pronouncements (p. 3).

We ask: without any monitoring, how would the Board learn about ‘weaknesses’ in those requirements? Since the APESB’s CEO is currently a ‘public interest Board member’ of the IESBA National Standards Setters group’ (*ibid.*) perhaps she could take our submission on board – or better still, to her Board.

2. IMPACT OF SPENDING ON CONSULTANTS AND CONTRACTORS ON THE SIZE OF THE NSW PUBLIC SECTOR WORKFORCE

Our original submission examined data on consultancies and contractors in annual audited *NSW Reports on state finances* from 2010-11 to 2021-22. This period was selected because 2010-11 was the first year in which contractors were shown as a line item in the notes to the financial statements of the *NSW Reports on state finances*.

It found that ***from 2010-11 to 2021-22:***

- ***spending on consultants totalled nearly \$2.6 billion***, with the general government sector accounting for nearly \$2.1 billion; and
- ***spending on contractors totalled \$21.2 billion*** with the general government sector accounting for more than half at nearly \$12.2 billion; and
- ***total government spending on consultancy and contractor fees over 12 years totalled a massive \$23.8 billion*** of which general government accounted for more than half at \$14.2 billion.

Figures for both consultants and contractors were presented since there appears to be some uncertainty among those compiling *NSW Reports on state finances* as to the distinction between the two. This is illustrated by reclassifications over time of some data presented in these Reports.

One would have expected increased spending in the early years of changes and improvements in management information systems particularly in the first decade of the 2000s.

However, available information shows **spending on consultancies in the 10 years 2000-01 to 2009-10 totalled \$1.07 billion**. As noted above, the NSW Reports on state finances did not provide line items on spending on contractors prior to 2010-11.

Our submission also noted that in view of the quantum of spending from 2011-2022 on consultants (\$2.6 billion) and contractors (\$21.2 billion), one would have expected some impact on the number of public sector employees.

But according to the data presented in reports of the Public Service Commission, there has been little impact on public sector staffing despite this expenditure on consultants and contractors. In fact, the information shows:

- while there has been some fluctuation in numbers of public sector employees over the years since 2011 to 2018, they remained broadly constant around 330,000 full time equivalents (FTEs);
- in the four years from 2019 to 2022, numbers increased above this level each year.
- while some of the increase in the years after 2019 would have been expected due to COVID, there was an increase of 33,217 or a 10% increase in FTEs in 2022 over 2011.

Following a number of questions by the Committee during its deliberations we had a second look to shed some additional light on this matter.

The data show that in 1999 (the first year that the Public Service Commission produced its Workforce Profile report), FTEs were 272,863 (see table below). This means that there has been **an increase in FTEs of 90,754, a more than 33% increase from 1999 to 2022**.

This is obviously a simple approach and does not take account of changing circumstances such as the privatisations of government businesses or the increase in the NSW population etc.

However, the above confirms that, contrary to the initially stated objectives of those advocating outsourcing public sector work, the expenditure on consultants and contractors **has not led to a reduction in public sector employment**.

Not that we are advocating a reduction in the public sector. To the contrary, we are advocating a strengthening of the capability of the public sector with a greater focus

on the workforce skills required to undertake work which would pre-empt the use of consultants as far as possible.

Total State Sector Consultancy Fees, Contractor Fees, & Workforce

Year	Consultants \$m	Contractors \$m	Workforce FTEs
1998-99			272,863
1999-00			270,688
2000-01	133		283,099
2001-02	123		282,897
2002-03	99		291,264
2003-04	96		291,701
2004-05	86		294,376
2005-06	66		303,534
2006-07	68		303,048
2007-08	99		310,528
2008-09	89		319,061
2009-10	207		322,452
2010-11	197	549	330,400
2011-12	160	616	332,555
2012-13	179	866	329,336
2013-14	197	1,246	328,111
2014-15	180	1,340	326,765
2015-16	240	2,619	326,706
2016-17(a)	327	1,768	325,917
2017-18(a)(b)	390	2,005	329,005
2018-19 (c)	198	2,354	337,787
2019-20	155	2,220	348,508
2020-21	186	2,526	360,190
2021-22	180	3,094	363,617

Sources:

- (1) Notes to the Financial Accounts in various *NSW Reports on state finances*.
- (2) Various *NSW Public Sector Workforce Profile Reports*.

Notes:

- (1) FTEs: Describes the size of the workforce based on the total number of ordinary Time paid hours worked (excluding overtime and unpaid work). 'FTE workforce' describes the total number of full-time employees required to account for all ordinary time paid hours worked.
- (2) 2010-11 was the first year in which contractors were shown as a line item in the notes to the financial statements of the *NSW Reports on state finances*.
- (3) Information presented in the table is after the following post-date & post-year adjustments were made as noted in various NSW Reports on state finances:
 - (a) "TAHE Capital Program Delivery expenses of \$1,206 million have been reclassified from Contractor Fees and Other Employee Expenses to 'Supplies, Services and Other' in 2017-18. In 2016-17, there was \$849 million in Contractor Fees relating to TAHE. This has been reclassified to 'Supplies, Services and Other' (Source: 2017-18 *NSW Report on state finances*.)"
 - (b) "In 2017-18 \$235 million 'Contractor Fees' and \$132 million 'Consultancy Fees' were reclassified from 'Supplies, Services and Other' (Source: 2018-19 *NSW Report on state finances*.)"
 - (c) "In 2018-19, \$155 million 'Contractor Fees' were reclassified from 'Consultancy Fees' in the General Government Sector and the Total state sector, and \$131 million 'Contractor Fees' were reclassified from 'Supplies, Services and Other' in the State Sector."

3. IMPROVING THE CAPABILITY OF THE PUBLIC SECTOR

Our original submission noted that, in the era of short-term contracts and performance assessments, senior managers may be using consultants to provide advice on key decisions to protect themselves. Moreover, they have failed to recruit sufficient numbers of public servants with the requisite skills to assist with the development of policy and to be in a position to assess the value of advice provided by consultants

We made a number of recommendations aimed at improving the capability of the public service including:

- compiling and periodically updating summaries of the educational qualifications, experience, and age distribution of current public servants by agency in order to identify their skill profile and skill gaps;
- focussing recruitment on filling identified skill gaps;
- setting up a NSW Public Sector Consultancy;
- hiring consultants as a last resort with active monitoring of contracts, better information collected about them, and compulsory post-engagement reviews submitted;
- reporting of expenditure on consultants to be improved.

The Public Service Commission obviously can access a great deal of information on public sector employees. For example:

- **Occupations of public sector employees:** The Commission currently publishes annually summary information on the occupations of public sector employees (see e.g. *State of the NSW Public Sector Report 2022*).

Surprisingly, this list does not include occupations specialising in financial skills.

- **Public Service Talent Pools:** The Commission has set up offer what it refers to as 'Public Service Talent Pools'. It claims that they 'offer recruiters from across the sector a quick and easy way to fill roles, by providing access to talent who have gone through a rigorous comparative assessment process and are ready to be hired'.

Pools available are categorised as:

- Grade 5/6 talent pool;
- Grade 9/10 talent pool; and
- Senior Executive Band 1 talent pool.

All that is a start. But if this reporting is significantly improved, it could form the basis of our recommendation to identify skill shortages and to establish a NSW Public Sector Consultancy.