

Finance and Public Administration References Committee – Final Colbeck report Management and Assurance of integrity by consulting services

Key recommendation

- The committee recommends that the government commissions the Australian Law Reform Commission, or other appropriate body, to undertake a review of the legislative frameworks and structures of partnerships in Australia with particular focus on partnerships in excess of 100 partners. The review should make recommendations to provide for appropriate regulatory governance and oversight of structures of this scale.

The report covers:

- Australian Government procurement framework
- Reliance on consultants by the Australian government
- APS contract management
- Culture in the Big 4 consulting firms
- Regulation of the consulting industry

Key points about culture in the Big 4

- The APS Values articulate the parliament's expectations of public servants but there is not a universal and clearly articulated set of standards that apply to consulting firms in the way that there is for the APS.
- The motivations of the consulting firms and the APS, at their core, are different and some submitters suggested that this difference in values amounts to an inconsistency in values.
- They considered that consultants are primarily concerned with making a profit, whereas the APS works to support the Australian community.
- Some submitters suggested that one driver in the consulting firms' priority of profit over values is linked to a lack of consequences for disregarding the values they claim to hold.
- When looking at consulting firms doing work for the Australian Government, conflicts of interest exist in numerous forms.
- The APS Code of Conduct requires employees to take reasonable steps to avoid any conflict of interest, real or apparent, in connection with their employment. The approach to managing and interpretation of what constitutes a conflict of interest varies across consulting firms.
- The Big 4 consulting firms, and others, each have their own unique conflicts of interest policies. However, the committee has received evidence that despite the existence of these policies, conflicts of interest are improperly managed, and at times, ignored.
- The Committee remain concerned that the committee's core recommendation that PwC be open and honest with the Australian Parliament and people has not been reflected in the actions of PwC

Key points on regulation of consulting firms

- While individual management consultants are subject to domestic laws, unlike other professional services such as auditing and law, management consulting is not a protected or regulated profession. Consequently, management consultants cannot formally be stripped of their title in cases of unethical behaviour.
- Managing issues related to breach of contract in government consulting contracts is the predominant method that the APS has to hold the external consultants that it engages to account. This is made more difficult as the regulation of large partnerships, which is the structure of the

major accounting, audit and consulting firms in Australia, is within the remit of the State and Territory governments, rather than the Commonwealth.

- This means that the duties and obligations placed on corporations and their directors set out in the Corporations Act 2001 do not apply to many consultants, including those employed by the Big 4, and federal regulators such as the Australian Securities and Investments Commission (ASIC) do not generally have the power to initiate investigations of wrongdoing.
- The current framework has resulted in major regulatory gaps in relation to the performance and conduct of consultants.
- The committee received evidence that unlike professions such as accounting, law, medicine, and engineering, there is no specific registration regime for consultants. This can result in some consultants being subject to no oversight and others being subject to multiple overlapping oversight and regulatory regimes (for example if they are also a legal practitioner or a registered tax agent).

Structural and regulatory changes

- Several submitters stated that to avoid the conflicts of interest that are prevalent in this current system, a professional services firm cannot provide both auditing and consultancy services
- The committee heard that once a partnership grows beyond 100 partners it becomes difficult for partners to effectively manage their individual interests. It is the committee's view that for organisations of the scale of PwC, KPMG, Deloitte, and EY that this is not acceptable and that reform in this area is required, particularly for partnerships in excess of 100 partners.
- While the committee has received a great deal of evidence in relation to the size of partnerships and the failure of their regulatory structures—and the committee agrees that this matter should be reviewed—the committee did not receive enough specific evidence in relation to this point to determine what changes to the current partnership structure of large firms would be appropriate.
- Given the current patchwork of regulation surrounding consultants, several submitters have argued that an independent regulator is needed.
- Throughout this inquiry, it has become clear there is no established code of conduct that applies to management consultants as a profession. This leads to a lack of alignment with the APS Code of Conduct when consultants are undertaking work for the government.

Other Committee views and recommendations

- The committee considers that for the APS to be assured of the integrity of the consulting services that it procures, improved oversight and regulation of bodies like Chartered Accountants Australian and New Zealand (CA ANZ), CPA Australia, and the Institute of Public Accountants (IPA) is required (these bodies represent chartered accountants, only some of whom are consultants).
- The committee is concerned that where Parliaments have given the privilege of self-regulatory structures to professional bodies, such as the above, it is appropriate that there is a level of scrutiny as to how those self-regulatory structures and standards are managed and applied.
- The committee recommends that the Australian government:
 - require those organisations that operate professional standards as self regulatory regimes, to report annually on the operation of those standards to the Joint Standing Committee on Corporations and Financial Services; and
 - require these same organisations to appear before that committee to provide oversight on the operation of the relevant standard.
- The committee received evidence that unlike professions such as accounting, law, medicine, and engineering, there is no specific registration regime for consultants. This can result in some

consultants being subject to no oversight and others being subject to multiple overlapping oversight and regulatory regimes (for example if the person is also a legal practitioner or a registered tax agent). As a result, some standards apply to some consultants, creating an uneven gap in regulation.

- The committee recommends that the Parliament legislate to establish a Joint Standing Committee to review and approve consultancy and services contracts with provisions and thresholds similar to those in the Public Works Act 1969 but appropriately adjusted to suit the requirements of providing oversight for this significant element of government spending.

Additional recommendations by the Greens

- The Australian Government requires;
 - require entities with government contracts to publish their client lists,
 - require consultants undertaking public sector work to avoid any conflict of interest, actual or perceived, and disclose details of any material personal interest in connection with their contract,
 - ensure that any consulting firm under investigation by a regulatory body must advise the government and cannot tender for new work until it is cleared,
 - amend the Corporations Act 2001 to lower the maximum number of partners for accountants to 100,
 - ensure that the states and territories refer their remaining power to regulate large partnerships to the Commonwealth,
 - legislate transparency and reporting requirements for large partnerships as apply to corporations under the Corporations Act
- The Australian Greens recommend that any firm providing audit services in Australia be prevented from providing non-audit services, including when engaging in business with the Australian Government
- The Australian Government:
 - acknowledge that voluntarist and self-regulation has failed in the consulting sector and that enforceable standards are required, including powers of investigation and penalties.
 - establish an Independent Regulator for the consulting industry, with an enforceable professional code of conduct, national standards, investigation powers and penalties for breaches.
 - consider giving responsibility for regulating professional services in one independent institution, with investigative and enforcement powers.