



NSW GOVERNMENT RESPONSE

NSW Government's use and management of consulting services

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INTRODUCTION

The NSW Government acknowledges the significant issues raised through the inquiry, including the increased reliance on consultants to the detriment of core public sector capability. We also acknowledge the Committee's findings regarding deficiencies in visibility, transparency, accountability, and governance in the use of consultants in the NSW public sector.

In response to these concerns, the NSW Government will consider several action areas:

- **Core government work:** A new NSW Public Service Core Work Policy will define core public sector work that must be insourced, building on the Australian Public Service's Strategic Commissioning Framework.
- **Prioritising in-house capabilities:** Agencies will access existing in-house capabilities where possible before engaging consultants. The existing NSW Procurement Board direction will be strengthened to ensure agencies incorporate this consideration in pre-engagement checklists.
- **Specialist Capability Network:** The NSW Government is establishing a Specialist Capability Network and a central concierge team to reduce the use of consultants by redirecting agencies to in-house resources and building capabilities for services with the highest demand.
- **Improvements in data capture and reporting:** NSW Procurement will continue to improve data capture of agency-reported consultancy and professional services expenditure. This includes refining definitions and providing further guidance to agencies for consistent interpretation and application.
- **Monitoring and compliance with procurement policy:** The NSW Procurement Board will conduct a review to determine if changes are required to the existing agency procurement accreditation framework, including the current monitoring mechanisms.
- **Conflict of Interest Management:** Agencies must continuously assess and manage conflicts of interest throughout the procurement process, including requiring ongoing disclosure as a condition of engagement. Policies, practices, and buyer education will be enhanced to recognise and manage conflicts of interest effectively.

The broader context underscores the necessity for these reform actions. The NSW Government recognises that effective public scrutiny and accountability are critical for maintaining public trust. The NSW Government expects all suppliers, particularly consultants providing expert advice, to behave ethically and uphold the highest standards of integrity.

Therefore, it is essential for the Government to have systems, processes, and personnel in place to ensure these standards are met. NSW Government procurement is devolved, meaning that successful implementation of actions in response to the Committee's recommendations will involve extensive consultation, whole of government commitment, adequate resourcing and public sector capability building.

The NSW Government thanks the Committee for its detailed examination of the issues surrounding the use of consultants. Our responses to the recommendations contained in the Committee's final report are outlined in the following section.

RESPONSE TO RECOMMENDATIONS**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.

Supported

The NSW Government recognises that improving definitional clarity was also recommended by the NSW Audit Office in its March 2023 performance audit report on the NSW Government's agencies' use of consultants.

In response, the NSW Procurement Board issued a direction (PBD2023-05) that included a revised and expanded definition of 'consultant'. The revised definition more clearly delineates consultants from other types of professional services contractors who do not provide independent advice to inform decision making by management.

Additionally, in response to the NSW Audit Office's recommendation, NSW Procurement expanded guidance to agencies on [info.buy.nsw](https://www.buy.nsw.gov.au), including additional examples to aid interpretation and application of the definition.

The NSW Procurement Board (through PBD2023-05) has directed agencies to report all consultancy expenditure to NSW Procurement from January 2024. PBD2023-05 also recommends the inclusion of non-consultant professional services engagement data.

This dataset will complement existing agency annual reporting under Treasury Policy and Guidelines (TPG23-10).

NSW Procurement will continue to review agency-reported consultancy and professional services expenditure at least annually, and where required, further refine the definition and/or provide further guidance to agencies to support consistent interpretation and application of the definition.

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.

Supported in principle

The NSW Government acknowledges the value of a unified, authoritative data source for government spending on consultants and supports improved data collection.

Currently, agency annual reports remain the authoritative data source for government spending, including on consultants. Each agency that prepares an annual report continues to be required to disclose detailed information about consultancy expenditure, in accordance with Treasury Policy and Guidelines (TPG23-10).

NSW Treasury has recently undertaken consultation with all government agencies to identify improvements to the current annual reporting rules. This consultation process considered extending annual and financial reporting regime requirements to local health districts. Based on the feedback, Treasury is working with stakeholders to develop an updated framework to determine which agencies prepare annual reports, based on factors such as accountability, public interest, financial significance, and the costs to report. The updated framework will apply from 2024-25. It is intended that this, with verification, will form the basis of a single, consolidated and authoritative view of government spending on consultants.

Since January 2024, in response to recommendations made by the NSW Audit Office, the NSW Government has introduced a supplementary data collection process (utilising agencies' reporting to NSW Procurement under PBD2023-05). This provides a source of verification, greater granularity and strategic insights into the use of consultants.

It is important to note that different data sources for different intended purposes - such as financial, accounting, operational, or management purposes - will continue to be used across government. These data sources include agency annual reports, Prime (Treasury's budgeting and financial reporting system), Spend Cube (agency invoice data), and the Performance and Management Services Scheme's business advisory services supplier-reported data. Although there will be continuous improvement in data quality, collection, and triangulation, differences across these data sources will remain due to their different intended purposes and scope.

RECOMMENDATION 3

That the NSW Government ensure:

- 1) Any exemptions from the requirement that agencies report on consultant expenditure are removed.
- 2) Government agencies previously exempt from disclosure of consultant expenditure be required to disclose its historical expenditure.

Recommendation 3(1) - Partially supported

Each agency that prepares an annual report continues to be required to disclose detailed information about consultancy expenditure, in accordance with Treasury Policy and Guidelines (TPG23-10 Annual Reporting Requirements).

As noted in the response to Recommendation 2, NSW Treasury is currently working with agencies on an updated framework to determine which agencies prepare annual reports. This framework will ensure an appropriate balance between transparency and accountability, and the costs of providing that transparency and accountability. Some agencies will continue to be exempt from annual reporting requirements where the costs of reporting would outweigh the benefits. However, annual reporting will continue to cover the majority of government expenditure.

There are limited exceptions for a government sector agency to not prepare an annual report, and the *Government Sector Finance 2018 (GSF) Act* has a legislated process for determining when this is appropriate. The Treasurer must have regard to prescribed reporting exemption criteria as set out in section 7.3 of the GSF Act and clause 9A of the *Government Sector Finance Regulation 2018 (GSF Regulation)*.

The GSF Regulation provides for a very limited number of exceptions that meet certain criteria, including small agencies, Crown land managers, common trusts, special purpose staff agencies, and retained State interests. NSW Treasury developed the exemption rules in consultation with agencies and the Audit Office.

TPG23-10 outlines specific annual reporting information that must be included in mandatory reports. It consolidates all other annual reporting requirements from the GSF Act, its associated regulations, Treasurer's Directions, other legislation, and policies.

Regarding the engagement of consultants by or on behalf of an agency (excluding the NSW Trustee or the Senate, Board of Governors, or Council of a university) during the annual reporting period, the following details are required:

- For each engagement costing \$50,000 or more, the name of the consultant, the title of the project (clearly indicating the nature of the work), and the actual costs must be reported. For engagements costing less than \$50,000, the total number of engagements and the total cost must be disclosed, or a statement should be included indicating that no consultants were used.
- Disclosures on consultant expenditure must encompass all spending on consultants, adhering to the specified thresholds, regardless of whether the engagement is

expensed or capitalised for accounting purposes. For the 2023-24 reporting period, including capitalised consultant expenditure is recommended. However, from the 2024-25 reporting period onwards, including capitalised consultant expenditure becomes mandatory.

Recommendation 3(2) - Not supported

The NSW Government does not support requiring agencies previously exempt from disclosing consultant expenditure to disclose their historical expenditure. The benefits of doing so would not justify the costs to those agencies of preparing that information.

RECOMMENDATION 4

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

- 1) 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.
- 2) Not involved in core government work, that is, work for which departments and agencies do not have their own in-house capacity or immediate way of developing the skills and capacity consultants can bring.
- 3) Able to uplift the capability and skills of the public sector.
- 4) Clearly identified as consultants or contractors when working within government agencies, including by email systems, business cards, name badges, security passes, and staff directories.
- 5) Not involved in the recruitment process for other consultants and contractors.

Supported in principle

Consultants should be engaged only when necessary and for a clearly defined scope of work. However, it is noted that it is not always appropriate for government to maintain in-house capability and capacity. Where in-house capabilities exist, government should access these in the first instance and has established a new mechanism to do this.

In response to the NSW Audit Office's recommendations on NSW government agencies' use of consultants (March 2023), the NSW Procurement Board issued a direction (PBD2023-05) which included an expectation that agencies clearly define the need to use a consultant, rather than other resource types. In response, several agencies have implemented or reinforced pre-engagement checklists incorporating principles such as those outlined above. It is incumbent on agencies to maintain these practices as part of their business-as-usual operations.

With reference to 'core government work' the government supports the recommendation in the NSW Government's research summary report, "*Building up NSW Public Service Capability and Driving Down Use of Consultants*" (p39) to define core public sector work that must be insourced through a NSW Public Service Core Work Policy. This will build on the approach adopted in the Australian Public Service's Strategic Commissioning Framework, which sets clear expectations about the types of work that agencies must be able to perform in-house and the circumstances in which work can be procured.

NSW Government will continue to reinforce that professional services suppliers should only be engaged to provide expert support in the selection process and not involved in making selection decisions.

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.

Supported in principle

The NSW Government acknowledges the importance of strengthening post-engagement evaluations for engagements of consultants to ensure accountability and continuous improvement.

The NSW Procurement Board will strengthen the requirement for agencies to conduct post engagement evaluations by directing that these are compulsory for all substantial engagements.

Extending the post-evaluation reporting requirement to all substantial consultancy engagements will be considered. The NSW Government intends to investigate opportunities to enhance existing systems (such as eTenders) to incorporate post-engagement evaluation information and contact details to facilitate information sharing between agency buyers.

Noting that there are multiple different procurement arrangements for consultants across multiple government agencies, implementing this recommendation at a whole-of-government level will require extensive consultation and agreement involving the NSW Procurement Board, Procurement Leadership Group and the Construction Leadership Group.

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.

Not supported

In accordance with NSW Procurement Board Direction *PBD2023-05 Engagement of professional services suppliers*, when engaging a consultant, agencies must ensure an assessment of the consultant's work is performed.

The Performance and Management Services scheme requires agencies to complete supplier performance reports for all engagements exceeding \$150,000 (excluding GST) and for instances of poor performance, regardless of the engagement amount.

NSW Procurement is responsible for collating and aggregating these performance reports. This process ensures that there is a comprehensive review and accountability of supplier performance, particularly for significant contracts and instances where performance has been unsatisfactory.

RECOMMENDATION 7

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

- 1) The disclosure of all government tenders.
- 2) Greater detail in the description of contracts.
- 3) Specification of the reasons for either limited or no tender.
- 4) Specification of the reasons for all contract extensions and amendments.

Supported in principle

A recently approved Procurement Board Direction requires NSW Government agencies to publish (disclose) all government opportunities over \$150,000 including GST on the buy NSW tenders module (the replacement for eTendering). This will include closed tenders where a group of suppliers are invited to bid, and contracts established through direct negotiation.

The Procurement Board Direction will take effect from 31 December 2024 with an implementation transitional arrangement. An Application Programming Interface (API) will be developed to simplify and streamline the publication of all NSW Government agencies' tender opportunities on buy.nsw, and agencies will have up to 12 months after API development completion (ending no later than 31 December 2025) to comply with the Procurement Board Direction.

Information that is published in a contract disclosure is mandated under the *Government Information (Public Access) Act 2009*. Changes to required fields/information will require a Procurement Board Direction or change to legislation.

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.

Supported in principle

The government supports the transparency and accountability principles underpinning this recommendation.

Noting that the total contract value is disclosed under mandatory GIPA disclosure requirements, and as part of agency annual reports.

Requiring reporting of disclosed conflicts of interest by the consultancy firms used introduces complexity relating to evaluating the relevance, currency, and impact of any declared conflicts. Conflicts of interest can be effectively managed through agencies' established disclosure and management processes, which allow agencies to continually assess whether a conflict of interest exists throughout the course of an engagement. Mandating the reporting of all conflicts, regardless of their current status or impact, risks unnecessary duplication and potential public misconceptions about the nature and significance of these managed conflicts.

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.

Noted

The NSW Government notes this recommendation is directed to the Legislative Council.

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.

Supported in principle

Section 83B of the *Government Sector Employment Act 2013* already provides that certain senior executives who intend to accept an offer of employment in the private sector must first seek the guidance of the Public Service Commissioner if the employment directly relates to the executive's current role or responsibilities, or a role or responsibilities held during the previous 2 years.

The NSW Government is supportive of considering mechanisms to bolster management of actual or perceived conflicts of interest and the use of information or knowledge gained by senior executives when leaving the public sector.

Any proposed prohibitions will need to consider a broad range of public interest considerations including but not limited to community confidence in the public sector, the right of individuals, and competition issues.

The Government will consider whether existing provisions are appropriate, or whether changes to the *Government Sector Employment Act 2013*, regulations or other processes are required to provide appropriate protections against actual or perceived conflicts of interest.

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.

Supported in principle

The NSW Government appreciates the objective of this recommendation to ensure a transparent and holistic view of the extended external workforce - including contractors, consultants, and other labour hire workers – and enable understanding of sector- and agency-level resource mix (i.e. internal vs. external workforce mix) and identify skills gaps.

There are several methodology issues when trying to compare employee headcount data with procurement data on consultants and professional service contractors engaged to deliver statements of work.

The Public Service Commission (PSC) already produces an annual 'State of the Workforce' report. This report provides insights into the workforce within government agencies, including labour hire workers, but does not include consulting or professional service engagements.

It is noted that the Australian Government's audit of the Australian Public Service included external labour, such as consultants, contractors, labour hire, and outsourced service providers. However, developing and applying a reliable methodology would require careful planning to ensure accuracy, comparability, and relevance.

As outlined in other responses to recommendations in this report, the NSW Government remains committed to transparency and is open to exploring ways to enhance reporting mechanisms whilst balancing the benefit against the costs to implement.

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.

Supported in principle

The NSW Government recognises the potential benefits of incorporating requirements for knowledge and skill transfer in contracts with consulting firms. Integrating such provisions could enhance the capability of public sector employees, enabling them to undertake similar projects independently in the future.

Following the December 2023 NSW Audit Office report, agencies were required to adopt a more strategic approach to consultancy engagements, which includes considering knowledge transfer as part of agencies' pre-engagement checklists (as described in response to Recommendation 4).

While the implementation of this recommendation is broadly supported, it requires case by case consideration of suitability and potential additional costs. Knowledge transfer should be achieved where relevant, but for highly specialised work or infrequent tasks it may be inappropriate or impractical. Additionally, a requirement for knowledge transfer may increase engagement costs, which needs to be weighed against the ongoing benefit of the knowledge transferred.

Consultancy services are sometimes sought for their independent perspective and upskilling the public sector in these engagements may offer limited benefit where independence is a key element of the service.

The NSW Government supports the principle of integrating knowledge and skill transfer into consultancy contracts, while noting the need for a balanced approach to ensure value for money and practical implementation across various types of consultancy engagements. As such, the decision on implementing knowledge transfer requirements should be left to procuring agencies, with the onus on balancing the benefits against any associated costs.

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.

Supported in principle

The NSW Government is already working on ways to understand the skills of its workforce and how to better mobilise them across the sector where they are needed.

NSW Government research (*'Building up NSW public service capability and driving down the use of consultants'*, tabled in Parliament 6 June 2024) joined Public Service Commission capability and skills mapping within the public sector workforce with annual report data on consultancy expenditure for 17 types of work typically undertaken by consultants. This research identified some work types where there may be a resourcing mismatch between public servants employed to do a type of work and the amount of work that needs to be performed.

To better anticipate skills shortages, as well as potential workforce mobility solutions, the NSW Government is establishing a new group within the Premier's Department that will be responsible for identifying skills shortages and workforce gaps and undertaking long-term workforce reform and planning to deliver essential services across the state.

Understanding the skills, capabilities and capacity of the public sector to deliver different kinds of work is important for making strategic decisions about where and when to use consultants. However, teams can also be limited by factors which impact their ability to share and access skills across agencies. The NSW Government is already addressing this through a range of initiatives described in the response to Recommendation 14.

RECOMMENDATION 14

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

Supported

NSW Government has considered the approach taken by the Australian Government to establish an in-house specialty consulting team, and its feasibility for displacing demand for private sector consultants in the NSW context. Within the NSW Government, there are already more than a dozen in-house specialist capability functions supporting the sector with services and expertise like those provided by consultants. However, low levels of visibility and sector awareness can impede diverse utilisation. Rather than establishing a single in-house specialty consulting team, the most efficient and effective way to displace demand for private sector consultants is to better utilise the existing public servants in NSW Government's specialist capability functions that are already set up.

The NSW Government is establishing a Specialist Capability Network and a central concierge team to help reduce the use of consultants by redirecting agencies to in-house specialist resources where they are available and building in-house capabilities for services with the highest demand. This central team will itself have specialist capability in scoping problems and policy outcomes and determining which capabilities are best suited to different types of problems. It will help identify where there is a match between work and the Network's capabilities, or, where work is beyond the Network's existing capacity, better position agencies to be smarter buyers of professional services.

As the Network becomes operational, the concierge function will collect data about unmet demand for specialist functions within the sector, skills gaps in emergent work areas, and deeper market knowledge. This function can provide ongoing data-informed advice to the sector, to inform the Network's evolution over time.

NSW Government will also continue to promote other modes of engaging specialist skills and knowledge, through centres for excellence, communities of practice, and partnerships with university and civil society organisations.

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.

Supported in principle

NSW Treasury provides guidelines, tools, and templates to support the development of business cases across the sector. It is currently reviewing the Business Case Guidelines, including exploration of how the process can be streamlined and reliance on consultants reduced.

NSW Government also has internal specialist capability functions that can be engaged by agencies to develop business cases. The new NSW Government Specialist Capability Network and central concierge team will be able to facilitate the scoping and allocation of business case work requirements to appropriate specialist capabilities within Government.

RECOMMENDATION 16

That the NSW Government:

- 1) Specifically embed the conflict-of-interest provisions of its Supplier Code of Conduct into each contract.
- 2) 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.
- 3) Ensure the provisions concerning the management of any conflicts of interest are actively enforced.

Supported in principle

These principles already apply as conflict-of-interest provisions are embedded into each standard form contract available for use by agencies, ensuring that all parties to the engagement are informed about the expectation and can enforce these provisions where required.

Following the 2023 NSW Audit Office report into the use of consultants by the NSW Government, most agencies have implemented, or are in the process of implementing pre-engagement checklists when engaging consultants. These checklists include steps to ensure conflicts of interests are declared and where disclosed, managed appropriately.

The NSW Procurement Board Direction (PBD2023-05) includes the requirement and responsibility for public service agencies to ensure conflict of interests (potential, perceived or actual) are declared and managed prior to and during the course of the engagement.

RECOMMENDATION 17

That the NSW Government:

- 1) 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.
- 2) Require all consultants or contractors to provide a list of potential conflicts of interest arising from any prospective engagement.
- 3) Determine whether there is a conflict of interest, not leave this to the consultancies themselves to determine.
- 4) Specify the penalties to apply for breach of any conditions of the engagement, including the possible return of payment received.

Supported in principle

The NSW Government supports strengthening protections against consultant conflicts of interests.

17 (1) The government will work to ensure that existing guidance, such as NSW Independent Commission Against Corruption's (ICAC) guidance on Managing Conflict of Interest in the NSW Public Sector, and existing public service obligations regarding conflicts of interest under the *Government Sector Employment Act 2013* and relevant codes of conduct are rigorously applied.

17 (2) Government procurement arrangements currently require consultants or contractors to provide a list of potential conflicts of interest arising from any prospective engagement.

The Government will work towards enhancing policies, practices and education to public sector agencies to recognise and manage conflicts of interest effectively.

17(3) Government agencies engaging consultants must ensure that conflicts of interest (potential, perceived, or actual) are declared and managed prior to and during the course of the engagement.

In response to the December 2023 recommendations from the NSW Audit Office's report on the use of consultancy services, agencies have implemented, or are implementing pre-engagement checklists that include a step to prompt the collection of declarations of conflicts of interest from suppliers.

17 (4) The NSW Government already requires compliance with the Supplier Code of Conduct, and there are implications of non-compliance including termination of contracts, loss of future work, loss of reputation, investigation for corruption, matter referred for criminal investigation or suspension or removal from prequalification schemes and panel arrangements.

RECOMMENDATION 18

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:

- 1) Acts as an auditor.
- 2) Has an ongoing client in that area, or.
- 3) 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.

Supported in principle

The NSW Government will review how it can enhance existing policies to better manage conflicts and disclosure requirements.

If other recommendations resulting from this inquiry are appropriately implemented, the desired outcome of more effective management of conflicts of interest will be achieved, with a lower level of associated risk of unintended consequences. This approach will allow for a more balanced and practical resolution without overly restrictive measures that could hamper the government's access to specialised knowledge and expertise.

Additionally, implementing this recommendation as described may potentially compound existing supplier concentration risk and risk increasing potential vendor 'lock-in' as suppliers may have to choose between working for the NSW Government or the private sector.

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.

Supported in principle

The NSW Government will continue to work towards providing detailed guidance and training to standardise the approach to the identification and management of conflicts of interest across all agencies.

The NSW Government supports the intent of Recommendation 19, noting the influential testimony from ICAC in shaping this recommendation. ICAC's guidelines, found on ICAC's [Conflicts of interest standards webpage](#), are thoughtfully considered and consistent with public expectations, such as the 'reasonable person test'.

The NSW Procurement Board's direction (PBD2023-05) already contains an expectation regarding the management of conflicts of interest, so the NSW Government's response to this recommendation will involve additional compliance guidance on buy.nsw, including a more detailed checklist for conflicts of interest.

The NSW Government will ensure that each agency has in place mandatory policy and training for staff that covers conflicts of interest.

RECOMMENDATION 20

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

- 1) Are deemed ineligible for appointment to a public sector board.
- 2) 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.

Not supported

The NSW Government continues to review existing policies and guidelines and identify opportunities to strengthen requirements for public sector boards.

Premier's Memorandum M2021-07 "Appointments to NSW Government boards and committees" requires appropriate probity checks to be conducted on the recommended candidate prior to approval which should include conflicts of interest disclosures. The NSW Government Boards and Committees Guidelines also contain a conflict-of-interest process for real, potential or perceived conflicts and management of conflict of interests.

Management of a conflict may include the member's divestment of the interest/issue that is creating the conflict, requiring the member to resign/serve the relevant connection, or the member not taking part in relevant discussions/votes/receipt of materials on certain issues.

RECOMMENDATION 21

That the NSW Government:

- 1) 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.
- 2) Implement the necessary changes to the procurement process and policies that are identified by the review.

Supported

The 2023 NSW Audit Office report on the use of consultants highlighted various findings concerning the procurement processes and policies related to engaging consulting services. These findings have led to improvements and amendments in policies and guidance materials, such as the revised Procurement Board Direction (PBD2023-05), which outlines more explicitly expected buyer behaviours and practices during consultancy engagements.

Furthermore, the NSW Public Service Commissioner has recently introduced a new Code of Ethics and Conduct for NSW government sector employees, effective from 1 November 2024. This new Code, along with associated communications and training for employees, aims to enhance awareness and understanding of ethical behaviour expectations, including the management of conflicts of interest. This heightened awareness will also promote ethical conduct specifically in the engagement of consulting services.

Within the context of NSW government's current devolved procurement model, responsibility for attesting agency compliance with ethical behaviour standards lies with each agency head, based on the NSW Procurement Policy Framework and supported by each agencies' risk and assurance systems.

The NSW Procurement Board, as part of its statutory functions under the *Public Works and Procurement Act 1912 (s172(1))* has the function of monitoring compliance by government agencies (including with Board directions or policies). Therefore, the scope and approach of the recommended review will require further consultation with the Procurement Board (or its Risk and Compliance subcommittee). The Board will also consider how any necessary changes identified through the review might be integrated with existing monitoring mechanisms, such as the agency procurement accreditation framework.

RECOMMENDATION 22

That the NSW Government:

- 1) Establish an enforceable code of conduct tailored to managing consulting engagements.
- 2) Publicise those consulting services that sign the code.

Supported in principle

The government remains committed to ensuring robust mechanisms for monitoring and enforcing ethical behaviour throughout the procurement lifecycle.

The existing Supplier Code of Conduct (Code) provides a minimum set of expectations and behaviours for doing business with the NSW Government. This Code applies to all suppliers, including consulting firms, regardless of the method of engagement (direct, through a scheme, or through a tender process). Therefore, all suppliers must agree to the Code to supply to the government.

The Code is enforceable through the NSW Procurement Board, which can apply sanctions to suppliers who breach the Code. Maintaining a single, unified Code ensures consistency in procurement practices across all NSW Government agencies, which is crucial for fairness, transparency, and efficiency.

The NSW Procurement Board is committed to continuous improvement and will consider the inclusion of a new clause in the existing Code or other mechanisms that could further ensure ethical supplier behaviour throughout the procurement lifecycle.

RECOMMENDATION 23

That the NSW Government introduce a greater range of escalating sanctions for consultants who behave unethically.

Supported in principle

The NSW Government supports the principle of escalating sanctions for unethical behaviour, while ensuring that implementation is fair, enforceable, and practicable.

The NSW Government already requires compliance with the Supplier Code of Conduct, and there are implications of non-compliance including termination of contracts, loss of future work, loss of reputation, investigation for corruption, matter referred for criminal investigation or suspension or removal from prequalification schemes and panel arrangements.

After PwC's leak of confidential tax information came to light in 2023, the NSW Government took the following actions:

- Suspended PwC from the Taxation Services category of the Performance and Management Services Scheme (June 2023)
- Introduced a Procurement Board Direction with more stringent approval requirements for new engagements with PwC (July 2023)
- Passed legislation including tough new penalties for the disclosure of confidential taxation information (August 2023).

NSW Government sanctions are in addition to measures and sanctions taken by other bodies, including:

- The Australian Federal Police's criminal investigation into PwC over the tax leak scandal initiated in August 2023
- The Tax Practitioners Board's compliance order to PwC under section 30-20 of the Tax Agent Services Act 2009.

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.

Not supported

Public disclosure would need to be considered carefully on a case-by-case basis, having regard to policy, legal and commercial considerations.

It is essential to manage complaints and concerns in line with the NSW Government Procurement Policy Framework and the NSW Procurement Board Complaints Management Guidelines. The existing Supplier Code of Conduct already includes a section on how to report wrongdoing and possible breaches of the Code.

There are other mechanisms in place for the disclosure of conduct that may raise integrity concerns. For example, agencies have obligations under the *Independent Commission Against Corruption Act 1989* to report to ICAC any matter that the relevant person suspects on reasonable grounds concerns or may concern corrupt conduct.

There may also be other circumstances in which disclosure of certain behaviour is required, for example to external standards and regulation bodies for professionals, such as the Law Society or Accounting Professional and Ethical Standards Board.

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.

Noted

The Auditor-General currently has the power under the *Government Sector Audit Act 1983* to conduct a performance audit of all or any particular activities of an auditable entity. The Audit Office has the authority to access information from audited entities under sections 36 of the *Public Finance and Audit Act 1983* and 423 of the *Local Government Act 1993*. If information is not provided in a reasonable time, the Auditor-General can issue a notice compelling its provision.

This allows the Auditor-General to examine one or more contracts entered into between an agency and a consultant or contractor as part of a performance audit, including examining the quality of work produced as part of an 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*.

Noted

The NSW Government notes this recommendation is directed to the Legislative Council.

The NSW Government also notes that parliamentary committees have existing powers to compel witnesses to attend hearings under the Parliamentary Evidence Act (1901).

RECOMMENDATION 27

That the NSW Treasurer advocate to federal counterparts that consulting firms not be excluded from the requirement to company tax.

Noted

The NSW Treasurer will consider the recommendation.

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.

Noted

Payroll tax is harmonised across jurisdictions under a Protocol for Payroll Tax Harmonisation.